

RBR 74314/ R3/1527

# *The* **NORTH CAROLINA REGISTER**

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**Volume 3 • Issue 9 • Pages 348-400**

# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of ninety-five dollars (\$95.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

## ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

## TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

## NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

## NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

## CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue page number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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# NORTH CAROLINA REGISTER



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**NORTH CAROLINA REGISTER**  
***Publication Deadlines and Schedules***  
*(March 1988 - March 1989)*

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
08/01/88	07/11/88	07/18/88	08/31/88	12/01/88
08/15/88	07/26/88	08/02/88	09/14/88	12/01/88
09/01/88	08/11/88	08/18/88	10/01/88	01/01/89
09/15/88	08/26/88	09/02/88	10/15/88	01/01/89
10/03/88	09/12/88	09/19/88	11/02/88	02/01/89
10/14/88	09/26/88	10/03/88	11/13/88	02/01/89
11/01/88	10/11/88	10/18/88	12/01/88	03/01/89
11/15/88	10/26/88	11/02/88	12/15/88	03/01/89
12/01/88	11/07/88	11/15/88	12/31/88	04/01/89
12/15/88	11/23/88	12/02/88	01/14/89	04/01/89
01/02/89	12/08/88	12/15/88	02/01/89	05/01/89
01/16/89	12/27/88	01/03/89	02/15/89	05/01/89
02/01/89	01/10/89	01/17/89	03/03/89	06/01/89
02/15/89	01/26/89	02/02/89	03/17/89	06/01/89
03/01/89	02/08/89	02/15/89	03/31/89	07/01/89
03/15/89	02/21/89	03/02/89	04/14/89	07/01/89

\* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

## CHAPTER 7A, SUBCHAPTER XII, ARTICLE 60

## OFFICE OF ADMINISTRATIVE HEARINGS

[The following excerpt contains the statutory provisions that govern the Office of Administrative Hearing as amended by Chapters 1100 and 1111, Session Laws of 1987 (Regular Session, 1988). Note: These provisions may be subject to variable effective dates through October 1, 1988. Persons concerned should consult the Session Laws for specific information.]

§ 7A-750. Creation; status; purpose. -- There is created an Office of Administrative Hearings. The Office of Administrative Hearings is an independent, quasi-judicial agency under Article III, Sec. 11 of the Constitution and, in accordance with Article IV, Sec. 3 of the Constitution, has such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which it is created. The Office of Administrative Hearings is established to provide a source of independent hearing officers to preside in administrative cases and thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process. It shall also maintain dockets and records of contested cases and shall codify and publish all administrative rules.

§ 7A-751. Agency head; powers and duties. -- The head of the Office of Administrative Hearings is the Chief Administrative Law Judge. He shall serve as Director and have the powers and duties conferred on him by this Chapter and the Constitution and laws of this State. His salary shall be fixed by the General Assembly in the Current Operations Appropriations Act. In lieu of merit and other increment raises, the Chief Administrative Law Judge shall receive as longevity an annual amount payable monthly at the rates provided in G.S. 7A-65 and based upon his years of State service.

§ 7A-752. Chief Administrative Law Judge appointments; vacancy. -- The Chief Administrative Law Judge of the Office of Administrative Hearings shall be appointed by the Chief Justice for a term of office of four years. The first Chief Administrative Law Judge shall be appointed as soon as practicable for a term to begin on the day of his appointment and to end on June 30, 1989. Successors to the first Chief Administrative Law Judge shall be appointed for a term to begin on July 1 of the year the preceding term ends and to end on June 30 four years later. A Chief Administrative Law Judge may continue to serve beyond his term until his successor is duly appointed and sworn, but any holdover shall not affect the expiration date of the succeeding term.

The Chief Administrative Law Judge shall designate one administrative law judge as senior ad-

ministrative law judge. The senior administrative law judge may perform the duties of Chief Administrative Law Judge if the Chief Administrative Law Judge is absent or unable to serve temporarily for any reason.

§ 7A-753. Additional Administrative Law Judges; appointment; specialization. -- The Chief Administrative Law Judge shall appoint additional administrative law judges to serve in the Office of Administrative Hearings in such numbers as the General Assembly provides. No person shall be appointed or designated an administrative law judge except as provided in this Article.

The Chief Administrative Law Judge may designate certain administrative law judges as having the experience and expertise to preside at specific types of contested cases and assign only these designated administrative law judges to preside at those cases.

§ 7A-754. Qualifications; standards of conduct; removal. -- Only persons duly authorized to practice law in the General Court of Justice shall be eligible for appointment as the Director and chief administrative law judge or as an administrative law judge in the Office of Administrative Hearings. Neither the chief administrative law judge nor any administrative law judge may engage in the private practice of law as defined in G.S. 84-2.1 while in office; violation of this provision shall be grounds for removal. Each administrative law judge shall take the oaths required by Chapter 11 of the General Statutes. An administrative law judge may be removed from office by the Director of the Office of Administrative Hearings for just cause, as that term is used in G.S. 126-35.

§ 7A-755. Expenses reimbursed. -- The Chief Administrative Law Judge of the Office of Administrative Hearings and all administrative law judges shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a).

§ 7A-756. Power to administer oaths and issue subpoenas. -- The chief administrative law judge and all administrative law judges in the Office of Administrative Hearings may, in con-

nection with any pending or potential contested case under Chapter 150B:

- (1) Administer oaths and affirmations;
- (2) Sign and issue subpoenas in the name of the Office of Administrative Hearings requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence; and
- (3) Apply to the General Court of Justice, Superior Court Division, for any order necessary to enforce the powers conferred in this Article.

§ 7A-757. Temporary administrative law judges; appointments; powers and standards; fees. -- When regularly appointed administrative law judges are unavailable, the Chief Administrative Law Judge of the Office of Administrative Hearings may contract with qualified individuals to serve as administrative law judges for specific assignments. A temporary administrative law judge shall have the same powers and adhere to the same standards as a regular administrative law judge in the conduct of a hearing. A temporary administrative law judge shall not be considered a State employee by virtue of this assignment, and shall be remunerated for his service at a rate not to exceed three hundred dollars (\$300.00) per day and shall be reimbursed for travel and subsistence expenses at the rate allowed to State officers and employees by G.S. 138-6(a). The Chief Administrative Law Judge may also designate a full-time State employee to serve as a temporary administrative law judge with the consent of the employee and his supervisor; however, the employee is not entitled to any additional pay for this service.

§ 7A-758. Availability of administrative law judge to exempt agencies. -- The Chief Administrative Law Judge of the Office of Administrative Hearings may, upon request of the head of the agency, provide an administrative law judge to preside at hearings of public bodies not otherwise authorized or required by statute to utilize an administrative law judge from the Office of Administrative Hearings including, but not limited to, State agencies exempt from the provisions of Chapter 150B, municipal corporations or other subdivisions of the State, and agencies of such subdivisions.

§ 7A-759. Role as deferral agency. -- (a) The Office of Administrative Hearings is designated to serve as the State's deferral agency for

cases deferred by the Equal Employment Opportunity Commission to the Office of Administrative Hearings as provided in Section 706 of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5, or the Age Discrimination in Employment Act, 29 U.S.C. 621 for charges filed by State or local government employees covered under Chapter 126 of the General Statutes and shall have all of the powers and authority necessary to function as a deferral agency.

(b) The Chief Administrative Law Judge is authorized and directed to contract with the Equal Employment Opportunity Commission for the Office of Administrative Hearings to serve as a deferral agency and to establish and maintain a Civil Rights Division in the Office of Administrative Hearings to carry out the functions of a deferral agency.

(c) In investigating charges an employee of the Civil Rights Division of the Office of Administrative Hearings specifically designated by an order of the Chief Administrative Law Judge filed in the pending case may administer oaths and affirmations.

(d) Any charge not resolved by informal methods of conference, conciliation or persuasion shall be heard as a contested case as provided in Article 3 of Chapter 150B of the General Statutes.

(e) Notwithstanding G.S. 150B-34 and G.S. 150B-36, an order entered by an administrative law judge after a contested case hearing on the merits of a deferred charge is a final agency decision and is binding on the parties. The administrative law judge may order whatever remedial action is appropriate to give full relief consistent with the requirements of federal statutes or regulations.

(f) In addition to the authority vested in G.S. 7A-756 and G.S. 150B-33, an administrative law judge may monitor compliance with any negotiated settlement, conciliation agreement or order entered in a deferred case.

(g) The standards of confidentiality established by federal statute or regulation for discrimination charges shall apply to deferred cases investigated or heard by the Office of Administrative Hearings.

(h) Nothing in this section shall be construed as limiting the authority or right of any federal agency to act under any federal statute or regulation.

## CHAPTER 143B, ARTICLE 1, PART 3

## ADMINISTRATIVE RULES REVIEW COMMISSION

[The following excerpt contains the statutory provisions that govern the Administrative Rules Review Commission as amended by Chapter 1111, Session Laws of 1987 (Regular Session, 1988). Note: These provisions may be subject to variable effective dates through October 1, 1988. Persons concerned should consult the Session Law or the Administrative Rules Review Commission Staff for specific information.]

§ 143B-30. Definitions. --As used in this Part, the following definitions apply:

"Agency" means an agency subject to the provisions of Article 2 of Chapter 150B of the General Statutes.

"Commission" means the Administrative Rules Review Commission.

"Rule" means a "rule", as defined in G.S. 150B-2(8a).

§ 143B-30.1. Administrative Rules Review Commission created. --The Administrative Rules Review Commission is created. The Commission shall consist of eight members to be appointed by the General Assembly, four upon the recommendation of the President of the Senate, and four upon the recommendation of the Speaker of the House of Representatives. These appointments shall be made in accordance with G.S. 120-121, and vacancies in these appointments shall be filled in accordance with G.S. 120-122. All appointees shall serve two-year terms. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, ineligibility, death, or disability of any member shall be for the balance of the unexpired term. The chairman shall be elected by the Commission, and he shall designate the times and places at which the Commission shall meet. The Commission shall meet at least once a month. A quorum of the Commission shall consist of five members of the Commission. The Commission is an independent agency under Article III, Section 11 of the Constitution.

Members of the Commission who are not officers or employees of the State shall receive compensation of two hundred dollars (\$200.00) for each day or part of a day of service plus reimbursement for travel and subsistence expenses at the rates specified in G.S. 138.5. Members of the Commission who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6.

Any other provision of the General Statutes notwithstanding, the appointment of employees of the Commission shall be made by the Commission. Nothing in this Article shall be con-

strued to exempt employees of the Commission from the State Personnel Act.

The Commission shall prescribe procedures and forms to be used in submitting rules to the Commission for review.

§ 143B-30.2. Review of rules. -- (a) Rules adopted by an agency on or after September 1, 1986, shall be submitted to the Administrative Rules Review Commission, which shall review the rule to determine whether it:

- (1) Is within the authority delegated to the agency by the General Assembly;
  - (2) Is clear and unambiguous;
  - (3) Is reasonably necessary to enable the administrative agency to perform a function assigned to it by statute or to enable or facilitate the implementation of a program or policy in aid of which the rule was adopted.
- Any rule filed by the 20th of a month shall be reviewed by the Commission by the last day of the next calendar month. Any rule filed after the 20th of a month shall be reviewed by the Commission by the last day of the second subsequent calendar month. The Commission may extend the time for review of a rule by a period of up to 70 days to obtain additional information on the rule. The Commission shall file notice of the extension of time for review of a rule with the agency and the Director of the Office of Administrative Hearings. A rule may not be presented for filing with the Director of the Office of Administrative Hearings under G.S. 150B-59 unless the rule has been reviewed by the Commission as provided in this section.

(b) If the Commission reviews a rule and determines that it is within the authority delegated to the agency, is clear and unambiguous, and is reasonably necessary, the Commission shall note its approval, notify the agency, and file the rule with the Director of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that section.

(c) If the Commission finds that an agency did not act within the authority delegated to it in promulgating a rule or a part of a rule, or that a

rule is not clear and unambiguous, or that a rule is unnecessary, the Commission shall object and delay the filing of the rule or part of the rule under G.S. 150B-59 for a period not to exceed 90 days. The Commission shall send to the agency, the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Administrative Hearings, a written report of the objection and delay of the rule or its part and the reasons for the delay. An agency may not present a rule or part of a rule that has been delayed to the Director of the Office of Administrative Hearings for filing under G.S. 150B-59, and a rule or its part that is delayed is not effective, as defined in G.S. 150B-2(2a).

(d) Within 30 days after receipt of the Commission's written report as authorized by (c), the agency shall either (1) revise the rule to remove the cause of the objections of the Commission and return the revised rule to the Commission or (2) return the rule to the Commission without change with the Commission's objections attached; provided, however, that in the case of a board, committee, council, or commission the response is due within 30 days after receipt of the Commission's written report or within 10 days following the next regularly scheduled meeting of the board, committee, council, or commission, whichever time period is greater. The Commission shall determine whether a revision removes its objections to the rule.

(e) If the Commission determines that a revision of a rule has removed the Commission's objections, the Commission shall note its approval and return the rule to the agency. The agency may then file the rule with the Director of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that section.

(f) Regardless of whether the agency returns the rule to the Commission without change instead of revising the rule to remove the Commission's objections or whether the Commission determines that a revision of a rule has not removed its objections, the Commission shall note its review of and objection to the rule once 90 days have passed since the Commission objected and delayed the filing of the rule or part of the rule pursuant to G.S. 143B-30.2(c) and shall return the rule to the agency. The agency may then file the rule with the Director of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that

section. If the agency did not remove the Commission's objections to the rule or part of the rule, the Commission may send to the President of the Senate and the Speaker of the House of Representatives a written report of its objections to the rule. Thereafter, if the General Assembly enacts legislation disapproving the rule, the rule shall no longer be effective.

The Legislative Services Officer shall send a copy of any law disapproving a rule to the agency and the Director of the Office of Administrative Hearings as soon as a copy is available.

(g) While the filing of a rule or its part is delayed, the agency that promulgated it may not adopt another rule, including a temporary rule, that has substantially identical provisions to those for which the Commission delayed the filing of the original rule or part of a rule.

(h) The filing of an amendment to a rule places the entire rule before the Commission for its review.

(i) Rules adopted in accordance with the procedure in G.S. 150B-13 shall be reviewed by the Commission and are subject to objection as provided in (c).

The Commission shall review the reasons given for the adoption of a temporary rule and may object to the rule due to the agency's failure to make the finding required by G.S. 150B-13.

§ 143B-30.3. Hearings. -- (a) Notwithstanding G.S. 143B-30.2(a), at any time before the time for review set out in that subsection expires or upon the written request of any agency, the Commission may call a public hearing on any rule. Within 60 days after the public hearing, the Commission may find that the agency did not act within the authority delegated to it in promulgating the rule, or that the rule is not clear and unambiguous, or that the rule is unnecessary, and object to and delay the rule in accordance with G.S. 143B-30.2.

(b) At least 15 days before the public hearing, the Commission shall give notice of the hearing to the rulemaking agency, to any person who requests a copy of the notice, and to any person who may be affected by the rule in the opinion of the chairman of the Commission.

§ 143B-30.4. Evidence. -- Evidence of the Commission's failure to object to and delay the filing of a rule or its part shall be inadmissible in all civil or criminal trials or other proceedings before courts, administrative agencies, or other tribunals.



## CHAPTER 150B

## THE ADMINISTRATIVE PROCEDURES ACT

[The following excerpt contains the statutory provisions of the Administrative Procedures Act as amended by Chapters 1100 and 1111, Session Laws of 1987 (Regular Session, 1988). Note: These provisions may be subject to variable effective dates through October 1, 1988. Persons concerned should consult the Session Laws for specific information.]

## Article 1.

## General Provisions.

§ 150B-1. Policy and scope. -- (a) The policy of the State is that the three powers of government, legislative, executive, and judicial, are, and should remain, separate. The intent of this Chapter is to prevent the commingling of those powers in any administrative agency and to ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) The purpose of this Chapter is to establish as nearly as possible a uniform system of administrative rule making and adjudicatory procedures for State agencies.

(c) This Chapter shall apply to every agency, as defined in G.S. 150B-2(1), except to the extent and in the particulars that any statute, including subsection (d) of this section, makes specific provisions to the contrary.

(d) The following are specifically exempted from the provisions of this Chapter: the Administrative Rules Review Commission, the Employment Security Commission, the Industrial Commission, the Occupational Safety and Health Review Board in all actions that do not involve agricultural employers, and the Utilities Commission.

The North Carolina National Guard is exempt from the provisions of this Chapter in exercising its court-martial jurisdiction.

The Department of Human Resources is exempt from this Chapter in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.

The Department of Correction is exempt from the provisions of this Chapter, except for Article 5 of this Chapter and G.S. 150B-13 which shall apply.

Articles 2 and 3 of this Chapter shall not apply to the Department of Revenue. Except as provided in Chapter 136 of the General Statutes, Articles 2 and 3 of this Chapter do not apply to the Department of Transportation.

Article 4 of this Chapter, governing judicial review of final administrative decisions, shall apply to The University of North Carolina and its constituent or affiliated boards, agencies, and institutions, but The University of North Carolina and its constituent or affiliated boards, agencies, and institutions are specifically exempted from the remaining provisions of this Chapter. Article 4 of this Chapter shall not apply to the State Banking Commission, the Commissioner of Banks, the Savings and Loan Division of the Department of Commerce, and the Credit Union Division of the Department of Commerce.

Article 3 of this Chapter shall not apply to agencies governed by the provisions of Article 3A of this Chapter, as set out in G.S. 150B-38(a).

Articles 3 and 3A of this Chapter shall not apply to the Governor's Waste Management Board in administering the provisions of G.S. 104E-6.2.

Article 2 of this Chapter shall not apply to the North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-10 and G.S. 104G-11. Articles 3 and 3A of this Chapter shall not apply to the North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.

§ 150B-2. Definitions. -- As used in this Chapter,

(01) "Administrative law judge" means a person appointed under G.S. 7A-752, 7A-753, or 7A-757.

(1) "Agency" means any agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the State government of the State of North Carolina but does not include any agency in the legislative or judicial branch of the State government; and does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, or local boards of education, other local public districts, units or bodies

- of any kind, or private corporations created by act of the General Assembly.
- (2) "Contested case" means an administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. "Contested case" does not include rulemaking, declaratory rulings, or the award or denial of a scholarship or grant.
- (2a) "Effective" means that a valid rule has been filed as required by G.S. 150B-59 and, if applicable, that the time specified in that section has elapsed. A rule that is effective is enforceable to the extent permitted by law.
- (2b) "Hearing officer" means a person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article.
- (3) "License" means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter 1 of Chapter 105 of the General Statutes and occupational licenses.
- (4) "Licensing" means any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. "Licensing" does not include controversies over whether an examination was fair or whether the applicant passed the examination.
- (4a) "Occupational license" means any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.
- (4b) "Occupational licensing agency" means any board, commission, committee or other agency of the State of North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within a particular profession, occupation or field of endeavor, and which is authorized to issue and revoke licenses. "Occupational licensing agency" does not include State agencies or departments which may as only a part of their regular function issue permits or licenses.
- (5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.
- (6) "Person aggrieved" means any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.
- (7) "Person" means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.
- (8) "Residence" means domicile or principal place of business.
- (8a) "Rule" means any agency regulation, standard or statement of general applicability that implements or interprets laws enacted by the General Assembly or Congress or regulations promulgated by a federal agency or describes the procedure or practice requirements of any agency not inconsistent with laws enacted by the General Assembly. The term includes the amendment or repeal of a prior rule. The term does not include the following:
  - a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143-11 or 143B-6, including policies and procedures manuals, if such a statement does not directly or substantially affect the procedural or substantive rights or duties of persons not employed by the agency or group of agencies.
  - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.
  - c. Nonbinding interpretive statements within the delegated authority of the agency that merely define, interpret or explain the meaning of a statute or other provision of law or precedent.
  - d. A form, the contents or substantive requirements of which are prescribed by rule or statute or the instructions for the execution or use of the form.
  - e. Statements of agency policy made in the context of another proceeding, including:

1. Declaratory rulings under G.S. 150B-17;
  2. Orders establishing or fixing rates or tariffs.
  - f. Statements of agency policy, provided that the agency policy is not inconsistent with any law enacted by the General Assembly, communicated to the public by use of signs or symbols, concerning:
    1. The use or creation of public roads or bridges;
    2. The boundaries of public facilities and times when public facilities are open to the public; or
    3. Safety in use of public facilities.
  - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases;
  - h. Scientific, architectural, or engineering standards, forms, or procedures.
  - (8b) "Substantial evidence" means relevant evidence a reasonable mind might accept as adequate to support a conclusion.
  - (9) "Valid" means that the rule has been adopted pursuant to the procedure required by law. A valid rule is unenforceable until it becomes effective.
- § 150B-3. Special provisions on licensing.
- (a) When an applicant or a licensee makes a timely and sufficient application for issuance or renewal of a license or occupational license, including the payment of any required license fee, the existing license or occupational license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license or occupational license are limited, until the last day for applying for judicial review of the agency order. This subsection does not affect agency action summarily suspending a license or occupational license under subsections (b) and (c) of this section.
- (b) Before the commencement of proceedings for the suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of any license other than an occupational license, the agency shall give notice to the licensee, pursuant to the provisions of G.S. 150B-23. Before the commencement of such proceedings involving an occupational license, the agency shall give notice pursuant to the provisions of G.S. 150B-38. In either case, the licensee shall be given an opportunity to show compliance with all lawful re-

quirements for retention of the license or occupational license.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license or occupational license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to February 1, 1976, which provide for the summary suspension of a license.

#### Article 2.

#### Rule Making.

§ 150B-9. Minimum procedural requirements; limitations on rule-making authority; criminal sanctions authorized. -- (a) It is the intent of this Article to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. Except for temporary rules which are provided for in G.S. 150B-13, the provisions of this Article are applicable to the exercise of any rule-making authority conferred by any statute, but nothing in this Article repeals or diminishes additional requirements imposed by law or any summary power granted by law to the State or any State agency. No rule hereafter adopted is valid unless adopted in substantial compliance with this Article.

(b) Each agency shall adopt, amend, suspend or repeal its rules in accordance with the procedures specified in this Article and pursuant to authority delegated by law and in full compliance with its duties and obligations. No agency may adopt any rule that implements or interprets any statute or other legislative enactment unless the power, duty, or authority to carry out the provisions of the statute or enactment is specifically conferred on the agency in the enactment, nor may any agency make any rule enlarging the scope of any trade or profession subject to licensing.

(c) The power to declare what shall constitute a crime and how it shall be punished and the power to establish standards for public conduct are vested exclusively in the General Assembly. No agency may adopt any rule imposing a criminal penalty for any act or failure to act, including the violation of any rule, unless the General Assembly authorizes a criminal sanction and specifies a criminal penalty for violation of the rule.

(d) No agency may adopt as a rule the verbatim text of any federal or North Carolina statute or

any federal regulation, but an agency may adopt all or any part of such text by reference under G.S. 150B-14.

§ 150B-10. Statements of organization and means of access to be published. -- To assist interested persons dealing with it, each agency shall, in a manner prescribed by the Director of the Office of Administrative Hearings, prepare a description of its organization, stating the process whereby the public may obtain information or make submissions or requests. The Director of the Office of Administrative Hearings shall publish these descriptions annually.

§ 150B-11. Special requirements. -- In addition to other rule-making requirements imposed by law, each agency shall:

- (1) Adopt rules setting forth the nature and requirements of all formal and informal procedures available, including a listing of all forms that are required by the agency. Procedures concerning only internal management which do not directly affect the rights of or procedures available to the public shall not be adopted as rules.
- (2) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions, except those used only for internal management of the agency.
- (3) Submit to the Director of the Budget a summary of any proposed rule requiring the expenditure or distribution of State funds and obtain approval of such expenditure or distribution of State funds prior to publishing the notice of public hearing required by G.S. 150B-12(2). For purposes of this subdivision the term "State funds" shall have the same meaning as is set out in G.S. 143-1 and shall also apply to the funds of all occupational licensing boards included under G.S. 150B-1. The agency shall include a fiscal note with any proposed rule, other than a temporary rule, so submitted. The fiscal note shall state what effect, if any, the proposed rule will have on the revenues, expenditures, or fiscal liability of the State or its agencies or subdivisions. The fiscal note shall include an explanation of how such effect, if any, was computed.
- (4) Submit a fiscal note in accordance with G.S. 120-30.48 for a proposed rule that affects the expenditures or revenues of a unit of local government. The fiscal note shall be submitted no later than the date when a notice of public hearing on the

proposed rule is published in the North Carolina Register. The notice shall state that a fiscal note has been prepared for the proposed rule and may be obtained from the agency. An erroneous fiscal note prepared in good faith does not affect the validity of a rule.

§ 150B-12. Procedure for adoption of rules.

-- (a) Before the adoption, amendment or repeal of a rule, an agency shall give notice of a public hearing and offer any person an opportunity to present data, opinions, and arguments. The notice shall be given within the time prescribed by any applicable statute, or if none then at least 30 days before the public hearing and before the adoption, amendment, or repeal of the rule. The notice shall include:

- (1) A reference to the statutory authority under which the action is proposed;
- (2) The time and place of the public hearing and a statement of the manner in which data, opinions, and arguments may be submitted to the agency either at the hearing or at other times by any person; and
- (3) The text of the proposed rule, or amendment in the form required by G.S. 150B-63(d2) and the proposed effective date of the rule or amendment.

(b) Repealed.

(c) The agency shall publish the notice in the North Carolina Register and as prescribed in any applicable statute.

The agency may also publish the notice or a synopsis of the notice in other ways selected by the agency to give notice to persons likely to be affected by the proposed rule. Methods that may be employed by the agency, depending upon the circumstances, include publication of the notice in one or more newspapers of general circulation or, when appropriate, in trade, industry, governmental or professional publications.

(d) The public hearing shall not be conducted as a contested case unless a specific statute requires that the proposed rule be adopted by adjudicatory procedures.

(e) The proposed rule shall not be changed or modified after the notice required by this section is published and before the rule-making hearing. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the consideration urged against its adoption. The record in every rule-

making proceeding under this Article shall remain open at least 30 days either before or after the hearing for the purposes of receiving written comments, and any such comments shall be included in the hearing records. All comments received, as well as any statement of reasons issued to an interested person under this section, shall be included in the rule-making record.

(f) No rule-making hearing is required for the adoption, amendment, or repeal of a rule which solely describes forms or instructions used by the agency.

(g) No rule-making hearing is required if the Director of the Office of Administrative Hearings determines that the amendment to a rule does not change the substance of the rule and that the amendment is:

- (1) A relettering or renumbering instruction; or,
- (2) The substitution of one name for another when an organization or position is renamed; or,
- (3) The correction of a citation to rules or laws which has become inaccurate since the rule was adopted because of repealing or renumbering of the rule or law cited; or
- (4) The correction of a similar formal defect; or
- (5) A change in information that is readily available to the public such as addresses and telephone numbers.

(h) No rule-making hearing is required to repeal a rule if the repeal of the rule is specifically provided for by the Constitution of the United States, the Constitution of North Carolina, any federal or North Carolina statute, any federal regulation, or a court order. No rule-making hearing is required to amend or repeal a rule to comply with G.S. 143B-30.2 in accordance with G.S. 150B-59(c).

§ 150B-13. Temporary rules. -- (a) Except as provided in subsection (b) of this section, if an agency which is not exempted from the notice and hearing requirements of this Article by G.S. 150B-1 determines in writing that:

- (1) Adherence to the notice and hearing requirements of this Article would be contrary to the public interest; and that
- (2) The immediate adoption, amendment, or repeal of a rule is necessitated by and related to:
  - a. A serious and unforeseeable threat to public health, safety, or welfare;
  - b. The effective date of a recent act of the General Assembly or the United States Congress;

- c. A recent change in federal or state budgetary policy;
- d. A federal regulation; or
- e. A court order,

the agency may adopt, amend, or repeal the rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practicable. The agency must accompany its rules filing with the Director of the Office of Administrative Hearings and the Governor with the agency's written certification of the finding of need for the temporary rule, together with the reasons for that finding and a copy of the notice of hearing on the proposed permanent rule.

(a1) The written certification of the finding of need for the temporary rule shall be signed by:

- (1) The member of the Council of State in the case of the Departments of Justice, Insurance, Public Education, Labor, Agriculture, Treasurer, State Auditor, or Secretary of State.
- (2) The chairman of the board in the case of an occupational licensing board or the Director of the Office of Administrative Hearings in the case of that agency.
- (3) The Governor in the case of all other agencies.

(b) If the Department of Crime Control and Public Safety, Transportation, Revenue, or Correction determines in writing that the immediate adoption, amendment, or repeal of a rule is necessitated by:

- (1) The public health, safety, or welfare;
- (2) The effective date of a recent act of the General Assembly or the United States Congress;
- (3) A federal regulation; or
- (4) A court order,

the agency may adopt, amend, or repeal the rule. The agency must accompany its rule filing with the Director of the Office of Administrative Hearings and the Governor with the agency's written certification of the finding of need for the temporary rule signed by the Governor together with the reasons for that finding. In the case of the Department of Correction, in addition to the reasons set forth in subdivisions (1) through (4) of this subsection, the Department may file a temporary rule when necessary for the management and control of persons under the custody or supervision of the Department in extraordinary circumstances as certified by the Secretary. The Department shall file any temporary rule within two working days of its adoption by the Secretary under G.S. 148-11.

(c) Rules filed under subsections (a) and (b) of this section shall be effective for a period of not longer than 180 days and are subject to re-

view as provided in G.S. 143B-30.2(i). An agency adopting a temporary rule shall begin normal rule-making procedures on the permanent rule under this Article at the same time the temporary rule is adopted.

§ 150B-14. Adoption by reference. -- (a) An agency may adopt by reference in its rules, without publishing the adopted matter in full:

- (1) All or any part of a code, standard, or regulation which has been adopted by any other agency of this State or by any agency of the United States or by a generally recognized organization or association;
- (2) Any plan or material which is adopted to meet the requirements of any agency of the United States and approved by that agency;
- (3) Any plan, material, manual, guide or other document establishing job application or employment practices or procedures of any State agency other than the State Personnel Commission. The State Personnel Commission, however, shall incorporate by reference in its rules job classification standards, including but not limited to those relating to qualifications and salary levels; or
- (4) The hearings division rules promulgated by the Office of Administrative Hearings.

In adopting matter by reference, the agency shall specify in the rule and in the Register whether such adoption is in accordance with the provisions of subsection (b) or (c) of this section. The agency can change this election only by a subsequent rulemaking proceeding.

(b) If an agency adopts matter by reference in accordance with this subsection, such reference shall not cover any later amendments and editions of the adopted matter, but if the agency wishes to incorporate them in its rule it shall amend the rule or promulgate a new rule.

(c) If any agency adopts matter by reference in accordance with this subsection, such reference shall automatically include any later amendments and editions of the adopted matter.

(d) An agency may cross-reference its own rules in the North Carolina Administrative Code without violating the provisions of (a)(1) of this section.

§ 150B-15. Continuation of rules. -- When a law authorizing or directing an agency to promulgate rules is repealed, and (i) substantially the same rule-making power or duty is vested in the same or a successor agency by a new provision of law, or (ii) the function of the agency to which the rules are related is transferred to another agency by law or executive order, the

existing rules of the original agency shall continue in effect until amended or repealed, and the agency or successor agency may repeal any rule relating to the transferred duty or function. When a law creating an agency or authorizing or directing it to promulgate rules is repealed or the agency is abolished and (i) substantially the same rule-making power or duty is not vested in the same or a successor agency by a new provision of law and (ii) the function of the agency to which the rules are related is not transferred to another agency, the existing applicable rules of the original agency are automatically repealed as of the effective date of the law repealing the agency's rule-making power or abolishing the agency.

§ 150B-16. Petition for adoption of rules. -- Any person may petition an agency to promulgate, amend, or repeal a rule, and may accompany his petition with such data, views, and arguments as he thinks pertinent. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 30 days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rule-making proceedings in accordance with G.S. 150B-12 and G.S. 150B-13; provided, however, commissions and boards shall act on a petition at their next regularly scheduled meeting, but in any case no later than 120 days after submission of a petition. Denial of the petition to initiate rule making under this section shall be considered a final agency decision for purposes of judicial review.

§ 150B-17. Declaratory rulings. -- On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

Article 3.

Administrative Hearings.

§ 150B-22. Settlement; contested case. -- It is the policy of this State that any dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty, should be settled through informal procedures. In trying to reach a settlement through informal procedures, the agency may not conduct a proceeding at which sworn testimony is taken and witnesses may be cross-examined. Notwithstanding any other provision of law, if the agency and the other person do not agree to a resolution of the dispute through informal procedures, either the agency or the person may commence an administrative proceeding to determine the person's rights, duties, or privileges, at which time the dispute becomes a "contested case."

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention. -- (a) A contested case shall be commenced by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall also serve a copy of the petition on all other parties and shall file a certificate of service together with the petition. Any petition filed by a party other than an agency shall be verified or supported by affidavit and shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

- (1) Exceeded its authority or jurisdiction;
- (2) Acted erroneously;
- (3) Failed to use proper procedure;
- (4) Acted arbitrarily or capriciously; or
- (5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the Office of Administrative Hearings in the same manner as other contested cases under this Article, except that the decision of the State Personnel Commission shall be advisory only and not binding on the local appointing authority, unless (1) the employee,

applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or (2) applicable federal standards require a binding decision. In these two cases, the State Personnel Commission's decision shall be binding.

(b) The parties shall be given notice not less than 15 days before the hearing by the Office of Administrative Hearings, which notice shall include:

- (1) A statement of the date, hour, place, and nature of the hearing;
- (2) A reference to the particular sections of the statutes and rules involved; and
- (3) A short and plain statement of the factual allegations.

(c) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) Any person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. In addition, any person interested in a contested case may intervene and participate in that proceeding to the extent deemed appropriate by the administrative law judge.

(e) All hearings under this Chapter shall be open to the public. Hearings shall be conducted in an impartial manner. Hearings shall be conducted according to the procedures set out in this Article, except to the extent and in the particulars that specific hearing procedures and time standards are governed by another statute.

(f) Unless another statute or a federal statute or regulation sets a time limitation for the filing of a petition in contested cases against a specified agency, the general limitation for the filing of a petition in a contested case is 60 days. The time limitation, whether established by another statute, federal statute, or federal regulation, or this section, shall commence when notice is given of the agency decision to all persons aggrieved who are known to the agency by personal delivery or by the placing of the notice in an official depository of the United States Postal Service wrapped in a wrapper addressed to the person at the latest address given by the person to the agency. The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition.

§ 150B-24. Venue of hearing. -- (a) The hearing of a contested case shall be conducted:



- (1) In the county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence;
- (2) In the county where the agency maintains its principal office if the property or rights that are the subject matter of the hearing do not affect any person or if the subject matter of the hearing is the property or rights of residents of more than one county; or
- (3) In any county determined by the administrative law judge in his discretion to promote the ends of justice or better serve the convenience of witnesses.

(b) Any person whose property or rights are the subject matter of the hearing waives his objection to venue by proceeding in the hearing.

§ 150B-25. Conduct of hearing; answer. --

(a) If a party fails to appear in a contested case after proper service of notice, and if no adjournment or continuance is granted, the administrative law judge may proceed with the hearing in the absence of the party.

(b) A party who has been served with a notice of hearing may file a written response, and a copy must be mailed to all other parties not less than 10 days before the date set for hearing.

(c) The parties shall be given an opportunity to present arguments on issues of law and policy and an opportunity to present evidence on issues of fact.

(d) A party may cross-examine any witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. Any party may submit rebuttal evidence.

§ 150B-26. Consolidation. -- When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending, the Director of the Office of Administrative Hearings may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings.

§ 150B-27. Subpoena. -- After the commencement of a contested case, the administrative law judge may issue subpoenas upon his own motion or upon a written request. When a written request for a subpoena has been made, the administrative law judge shall issue the requested subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. Upon written request, the administrative law judge shall revoke a subpoena if, upon a hearing, he finds that the

evidence the production of which is required does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6.

§ 150B-28. Depositions and discovery. --

(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in contested cases may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) On a request for identifiable agency records, with respect to material facts involved in a contested case, except records related solely to the internal procedures of the agency or which are exempt from disclosure by law, an agency shall promptly make the records available to a party.

§ 150B-29. Rules of evidence. -- (a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the administrative law judge in making a recommended decision, by the agency in making a final decision, or by the court on judicial review.

(b) Evidence in a contested case, including records and documents, shall be offered and made a part of the record. Factual information or evidence not made a part of the record shall not be considered in the determination of the case, except as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.



§ 150B-30. Official notice. -- Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument.

§ 150B-31. Stipulations. -- (a) The parties in a contested case may, by a stipulation in writing filed with the administrative law judge, agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable.

(b) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties.

§ 150B-32. Designation of administrative law judge. -- (a) The Director of the Office of Administrative Hearings shall assign himself or another administrative law judge to preside over a contested case.

(b) On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of an administrative law judge, the administrative law judge shall determine the matter as a part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When an administrative law judge is disqualified or it is impracticable for him to continue the hearing, the Director shall assign another administrative law judge to continue with the case unless it is shown that substantial prejudice to any party will result, in which event a new hearing shall be held or the case dismissed without prejudice.

§ 150B-33. Powers of administrative law judge. -- (a) An administrative law judge shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

(b) An administrative law judge may:

(1) Administer oaths and affirmations;

(2) Sign and issue subpoenas in the name of the Office of Administrative Hearings, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;

(3) Provide for the taking of testimony by deposition;

(4) Regulate the course of the hearings, including discovery, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;

(5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties;

(6) Stay the contested action by the agency pending the outcome of the case, upon such terms as he deems proper, and subject to the provisions of G.S. 1A-1, Rule 65;

(7) Determine whether the hearing shall be recorded by a stenographer or by an electronic device; and

(8) Enter an order returnable in the General Court of Justice, Superior Court Division, to show cause why the person should not be held in contempt. The Court shall have the power to impose punishment as for contempt for any act which would constitute direct or indirect contempt if the act occurred in an action pending in Superior Court.

(9) Determine that a rule as applied in a particular case is void because (1) it is not within the statutory authority of the agency, (2) is not clear and unambiguous to persons it is intended to direct, guide, or assist, or (3) is not reasonably necessary to enable the agency to perform a function assigned to it by statute or to enable or facilitate the implementation of a program or policy in aid of which the rule was adopted.

(10) Impose the sanctions provided for in G.S. 1A-1 or Chapter 3 of Title 26 of the North Carolina Administrative Code for non-compliance with applicable procedural rules.

§ 150B-34. Recommended decision or order of administrative law judge. -- (a) Except as provided in G.S. 150B-36(c), in each contested case the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law.

(b) After hearing the contested case and prior to issuing a recommended decision, the administrative law judge shall give each party an oppor-

tunity to file proposed findings of fact and to present written arguments to him.

§ 150B-35. No ex parte communication; exceptions. -- Unless required for disposition of an ex parte matter authorized by law, neither the administrative law judge assigned to a contested case nor a member or employee of the agency making a final decision in the case may communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate.

§ 150B-36. Final decision. -- (a) Before the agency makes a final decision, it shall give each party an opportunity to file exceptions to the decision recommended by the administrative law judge, and to present written arguments to those in the agency who will make the final decision or order.

(b) A final decision or order in a contested case shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. If the agency does not adopt the administrative law judge's recommended decision as its final decision, the agency shall state in its decision or order the specific reasons why it did not adopt the administrative law judge's recommended decision. The agency may consider only the official record prepared pursuant to G.S. 150B-37 in making a final decision or order, and the final decision or order shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to his attorney of record and the Office of Administrative Hearings.

(c) A determination by an administrative law judge in a contested case that the Office of Administrative Hearings lacks jurisdiction, or an order entered pursuant to the authority in G.S. 7A-759(e) shall constitute a final decision.

§ 150B-37. Official record. -- (a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

- (1) Notices, pleadings, motions, and intermediate rulings;
- (2) Questions and offers of proof, objections, and rulings thereon;
- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and

(5) The administrative law judge's recommended decision or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the official record to the agency making the final decision and shall forward a copy of the recommended decision to each party.

#### Article 3A.

#### Other Administrative Hearings.

§ 150B-38. Scope; required; notice; venue. -- (a) The provisions of this Article shall apply to the following agencies:

- (1) Occupational licensing agencies;
- (2) The State Banking Commission, the Commissioner of Banks, the Savings and Loan Division of the Department of Commerce, and the Credit Union Division of the Department of Commerce; and
- (3) The Department of Insurance and the Commissioner of Insurance.

(b) Prior to any agency action in a contested case, the agency shall give the parties in the case an opportunity for a hearing without undue delay and notice not less than 15 days before the hearing. Notice to the parties shall include:

- (1) A statement of the date, hour, place, and nature of the hearing;
- (2) A reference to the particular sections of the statutes and rules involved; and
- (3) A short and plain statement of the facts alleged.

(c) Notice shall be given personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the delivery date appearing on the return receipt. If notice cannot be given personally or by certified mail, then notice shall be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) A party who has been served with a notice of hearing may file a written response with the agency. If a written response is filed, a copy of the response must be mailed to all other parties not less than 10 days before the date set for the hearing.

(e) All hearings conducted under this Article shall be open to the public. A hearing conducted by the agency shall be held in the county where the agency maintains its principal office. A hearing conducted for the agency by an administrative law judge requested under G.S. 150B-40

shall be held in a county in this State where any person whose property or rights are the subject matter of the hearing resides. If a different venue would promote the ends of justice or better serve the convenience of witnesses, the agency or the administrative law judge may designate another county. A person whose property or rights are the subject matter of the hearing waives his objection to venue if he proceeds in the hearing.

(f) Any person may petition to become a party by filing with the agency or hearing officer a motion to intervene in the manner provided by G.S. 1A-1. Rule 24. In addition, any person interested in a contested case under this Article may intervene and participate to the extent deemed appropriate by the agency hearing officer.

(g) When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before an agency, the agency may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings.

(h) Every agency shall adopt rules governing the conduct of hearings that are consistent with the provisions of this Article.

§ 150B-39. Depositions; discovery; subpoenas. -- (a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in a contested case may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) Upon a request for an identifiable agency record involving a material fact in a contested case, the agency shall promptly provide the record to a party, unless the record relates solely to the agency's internal procedures or is exempt from disclosure by law.

(c) An agency may issue subpoenas in preparation for, or in the conduct of, a contested case upon its own motion. If a written request is made by a party in a contested case, an agency shall issue subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. Upon written request, the agency shall revoke a subpoena if, upon a hearing, the agency finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid by the party requesting the subpoena to

subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to any witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6.

§ 150B-40. Conduct of hearing; presiding officer; ex parte communication. -- (a) Hearings shall be conducted in a fair and impartial manner. At the hearing, the agency and the parties shall be given an opportunity to present evidence on issues of fact, examine and cross-examine witnesses, including the author of a document prepared by, on behalf of or for the use of the agency and offered into evidence, submit rebuttal evidence, and present arguments on issues of law or policy.

If a party fails to appear in a contested case after he has been given proper notice, the agency may continue the hearing or proceed with the hearing and make its decision in the absence of the party.

(b) Except as provided under subsection (c) of this section, hearings under this Article shall be conducted by a majority of the agency. An agency shall designate one or more of its members to preside at the hearing. If a party files in good faith a timely and sufficient affidavit of the personal bias or other reason for disqualification of any member of the agency, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding. If a presiding officer is disqualified or it is impracticable for him to continue the hearing, another presiding officer shall be assigned to continue with the case, except that if assignment of a new presiding officer will cause substantial prejudice to any party, a new hearing shall be held or the case dismissed without prejudice.

(c) The presiding officer may:

- (1) Administer oaths and affirmations;
- (2) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;
- (3) Provide for the taking of testimony by deposition;
- (4) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;
- (5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties; and

- (6) Apply to any judge of the superior court resident in the district or presiding at a term of court in the county where a hearing is pending for an order to show cause why any person should not be held in contempt of the agency and its processes, and the court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.
- (d) Unless required for disposition of an ex parte matter authorized by law, a member of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case under this Article shall not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually-related case. This section does not apply to an agency employee or party representative with professional training in accounting, actuarial science, economics or financial analysis insofar as the case involves financial practices or conditions.
- (e) When a majority of an agency is unable or elects not to hear a contested case, the agency shall apply to the Director of the Office of Administrative Hearings for the designation of an administrative law judge to preside at the hearing of a contested case under this Article. Upon receipt of the application, the Director shall, without undue delay, assign an administrative law judge to hear the case.
- The provisions of this Article, rather than the provisions of Article 3, shall govern a contested case in which the agency requests an administrative law judge from the Office of Administrative Hearings.
- The administrative law judge assigned to hear a contested case under this Article shall sit in place of the agency and shall have the authority of the presiding officer in a contested case under this Article. The administrative law judge shall make a proposal for decision, which shall contain proposed findings of fact and proposed conclusions of law.
- An administrative law judge shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if

the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

The agency may make its final decision only after the administrative law judge's proposal for decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the agency.

§ 150B-41. Evidence; stipulations; official notice. -- (a) In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available. It shall not be necessary for a party or his attorney to object to evidence at the hearing in order to preserve the right to object to its consideration by the agency in reaching its decision, or by the court of judicial review.

(b) Evidence in a contested case, including records and documents shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

(c) The parties in a contested case under this Article by a stipulation in writing filed with the agency may agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable. Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties.

(d) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the

earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. An agency may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it.

§ 150B-42. Final agency decision; official record. -- (a) After compliance with the provisions of G.S. 150B-40(e), if applicable, and review of the official record, as defined in subsection (b) of this section, an agency shall make a written final decision or order in a contested case. The decision or order shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150B-41. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record.

(b) An agency shall prepare an official record of a hearing that shall include:

- (1) Notices, pleadings, motions, and intermediate rulings;
- (2) Questions and offers of proof, objections, and rulings thereon;
- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
- (5) Proposed findings and exceptions; and
- (6) Any decision, opinion, order, or report by the officer presiding at the hearing and by the agency.

(c) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests.

#### Article 4.

##### Judicial Review.

§ 150B-43. Right to judicial review. -- Any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of the decision under this Article, unless

adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article.

§ 150B-44. Right to judicial intervention when decision unreasonably delayed. -- Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. Except for an agency that is a board or commission, an agency's failure to make a final decision within 60 days of the date on which all exceptions and arguments are filed under G.S. 150B-36(a) with the agency constitutes unreasonable delay. A board or commission's failure to make a final decision within the later of the 60 days allowed other agencies or 60 days after the board's or commission's next regularly scheduled meeting constitutes an unreasonable delay.

§ 150B-45. Procedure for seeking review; waiver. -- To obtain judicial review of a final decision under this Article, the party seeking review must file a petition in the Superior Court of Wake County or in the superior court of the county where the person resides.

The person seeking review must file the petition within 30 days after the person is served with a written copy of the decision. A person who fails to file a petition within the required time waives the right to judicial review under this Article. For good cause shown, however, the superior court may accept an untimely petition.

§ 150B-46. Contents of petition; copies served on all parties; intervention. -- The petition shall explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the party seeking the review shall serve copies of the petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the administrative proceeding may become a party to the review proceedings by notifying the court within 10 days after receipt of the copy of the petition.

Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

§ 150B-47. Records filed with clerk of superior court; contents of records; costs. -- Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency that made the final decision in the contested case shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under review together with: (i) any exceptions, proposed findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

§ 150B-48. Stay of decision. -- At any time before or during the review proceeding, the person aggrieved may apply to the reviewing court for an order staying the operation of the administrative decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65.

§ 150B-49. New evidence. -- An aggrieved person who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a recommended decision in the case, the court shall remand the case to the agency that conducted the administrative hearing. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made a recommended decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and recommended decision. The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision. The additional evidence and any affirmation or modification of a recommended decision or final decision shall be made part of the official record.

§ 150B-50. Review by superior court without jury. -- The review by a superior court of agency decisions under this Chapter shall be conducted by the court without a jury.

§ 150B-51. Scope of review. -- (a) Initial Determination in Certain Cases. In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision, the court shall make two initial determinations. First, the court shall determine whether the agency heard new evidence after receiving the recommended decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. Second, if the agency did not adopt the recommended decision, the court shall determine whether the agency's decision states the specific reasons why the agency did not adopt the recommended decision. If the court determines that the agency did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the agency to enter the specific reasons.

(b) Standard of Review. After making the determinations, if any, required by subsection (a), the court reviewing a final decision may affirm the decision of the agency or remand the case for further proceedings. It may also reverse or modify the agency's decision if the substantial rights of the petitioners may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
- (6) Arbitrary or capricious.

§ 150B-52. Appeal; stay of court's decision. -- A party to a review proceeding in a superior court may appeal to the appellate division from the final judgment of the superior court as provided in G.S. 7A-27. Pending the outcome of an appeal, an appealing party may apply to the court that issued the judgment under appeal for a stay of that judgment or a stay of the administrative decision that is the subject of the appeal, as appropriate.

Article 5.

Publication of Administrative Rules.

§ 150B-58. Short title. -- This Article may be cited as "The Registration of State Administrative Rules Act".

§ 150B-59. Filing of rules and executive orders. -- (a) Rules adopted by an agency and executive orders of the Governor shall be filed with the Director of the Office of Administrative Hearings no sooner than 90 days before their effective date. No rule, except temporary rules adopted under the provisions of G.S. 150B-13 or rules approved under G.S. 143B-30.2(e) or reviewed and objected to under (f), shall become effective earlier than the first day of the second calendar month after that filing.

(b) The acceptance for filing of a rule by the Director, by his notation on its face, shall constitute prima facie evidence of compliance with this Article.

(c) Rules adopted by an agency subject to the provisions of Article 2 of this Chapter in effect on January 1, 1986, that conflict with or violate the provisions of G.S. 150B-9(c) are repealed. Rules adopted by an agency subject to the provisions of Article 2 of this Chapter in effect on September 1, 1986, that do not conflict with or violate the provisions of G.S. 150B-9(c) shall remain in effect until July 15, 1988. These rules are repealed effective July 16, 1988, unless the Administrative Rules Review Commission determines that a rule complies with G.S. 143B-30.2(a). Provided, however, that:

- (1) The rules of the Office of State Personnel and the occupational licensing boards shall remain in effect until February 28, 1989, but are repealed effective March 1, 1989, unless approved by the Administrative Rules Review Commission.
- (2) The rules of the Department of Human Resources shall remain in effect until June 30, 1989, but are repealed effective July 1, 1989, unless approved by the Administrative Rules Review Commission.
- (3) Although the Department of Cultural Resources, the Office of the Governor, and the Council of State did not file the reports required under Chapter 746, Session Laws of 1985, nevertheless the rules of these three agencies shall remain in effect until February 28, 1989, but are repealed effective March 1, 1989, unless approved by the Administrative Rules Review Commission.

Review of these rules shall be carried out in the manner prescribed in G.S. 143B-30.2 except that a rule determined to be in compliance shall remain in effect. In the event of rules which the Commission determines do not comply with G.S. 143B-30.2, such rules may be revised or re-

pealed by the agency without a rulemaking hearing in accordance with G.S. 150B-12(h). Revised rules shall be returned to the Commission. If the Commission approves the rules, the Commission shall notify the agency and file the rules with the Office of Administrative Hearings. Rules adopted on or after January 1, 1986, shall become effective as provided in this Chapter.

§ 150B-60. Form of rules; responsibilities of agencies; assistance to agencies. -- (a) In order to be acceptable for filing, the rule must:

- (1) Cite the statute or other authority pursuant to which the rule is adopted;
- (2) Bear a certification by the agency of its adoption;
- (3) Cite any prior rule or rules of the agency or its predecessor in authority which it rescinds, amends, supersedes, or supplements;
- (4) Be in the physical form specified by the Director of the Office of Administrative Hearings; and
- (5) Bear a notation from the Administrative Rules Review Commission that it has reviewed the rule in accordance with G.S. 143B-30.2.

(b) Each agency shall designate one or more administrative procedure coordinators whose duties shall be to oversee all departmental functions required by this Chapter. The coordinator's duties shall include providing notice of public hearings; serving as liaison between the agency and the Office of Administrative Hearings, the Administrative Rules Review Commission and the public; and coordinating access to agency rules.

(c) The Director of the Office of Administrative Hearings shall:

- (1) Maintain an agency rule-drafting section in the Office of Administrative Hearings to draft or aid in the drafting of rules or amendments to rules for any agency; and
- (2) Prepare and publish an agency rule-drafting guide which sets out the form and method for drafting rules and amendments to rules, and to which all rules shall comply.

§ 150B-61. Authority to revise form. -- (a) The Director of the Office of Administrative Hearings shall have the authority, following acceptance of a rule for filing, to revise the form of the rule as follows:

- (1) To rearrange the order of rules, Chapters, Subchapters, Articles, sections, paragraphs, and other divisions or subdivisions;
- (2) To provide or revise titles or catchlines;



- (3) To reletter or renumber the rules and various subdivisions in accordance with a uniform system;
- (4) To rearrange definitions and lists; and
- (5) To make other changes in arrangement or in form that do not alter the substance of the rule and that are necessary or desirable for an accurate, clear, and orderly arrangement of the rules.

Revision of form by the Director shall not alter the effective date of a rule, nor shall revision require the agency to readopt or to refile the rule. No later than the close of the fifth working day after the filing of a rule by an agency, the Director shall return to the agency that filed the rule a copy of the rule in any revised form made by the Director, together with his certification of the date of the rule's filing.

The rule so revised as to form shall be substituted for and shall bear the date of the rule originally filed, and shall be the official rule of the agency.

(b) In determining the drafting form of rules the Director shall:

- (1) Minimize duplication of statutory language;
- (2) Not permit incorporations into the rules by reference to publications or other documents which are not conveniently available to the public; and
- (3) To the extent practicable, use plain language in rules and avoid technical language.

(c) The agency shall be responsible for notifying the Director within 30 days after a rule becomes effective of any typographical or technical error in the rule as codified. The Director shall correct the codified rule if it differs from the rule as adopted by the agency. Errors in any rule discovered more than 30 days after codification shall be changed only by the procedures established by Article 2 of this Chapter.

§ 150B-62. Public inspection and notification of current and replaced rules. -- (a) Immediately upon notation of a filing as specified in G.S. 150B-59(b), the Director of the Office of Administrative Hearings shall make the rule available for public inspection during regular office hours. Superseded, amended, revised, and rescinded rules filed in accordance with the provisions of this Article shall remain available for public inspection. The current and the prior rules so filed shall be separately arranged in compliance with the provisions of G.S. 150B-61(a).

(b) The Director shall make copies of current and prior rules, filed in accordance with the pro-

visions of this Article, available to the public at a cost to be determined by him.

(c) Within 50 days of the acceptance by the Director of a rule for filing, the agency filing the rule:

- (1) Shall publish the rule as prescribed in any applicable statute; and
- (2) May distribute the rule in a manner selected by the agency as best calculated to give notice to persons likely to be affected by the rule.

The rule so published or distributed shall contain the legend: "The form of this rule may be revised by the Director pursuant to the provisions of G.S. 150B-61."

§ 150B-63. Publication of executive orders and rules; the North Carolina Register. -- (a) The Director of the Office of Administrative Hearings shall compile, index and publish executive orders of the Governor and all rules filed and effective pursuant to the provisions of this Article.

(b) As nearly as practicable the compilation shall, in classification, arrangement, numbering, and indexing, conform to the organization of the General Statutes.

(c) If the Director determines that publication of any rule would be impracticable, he shall substitute a summary with specific reference to the official rule on file in his office.

(d) As soon as practicable after July 1, 1985, the Director shall publish, in print or other form, a compilation of all rules in force pursuant to the provisions of this Article. Cumulative supplements shall be published annually or more frequently in the discretion of the Director. Recompilations shall be made in the Director's discretion.

(d1) The Director shall also publish at periodic intervals, but not less often than once each month, the North Carolina Register which shall contain information relating to agency, executive, legislative or judicial actions that are performed under the authority of, or are required by, or are issued to interpret, or that otherwise affect, this Chapter. The North Carolina Register shall also contain notices under G.S. 120-165(a).

(d2) In publishing proposed amendments to rules, the Director shall show the portion of the rule being amended as it is to the degree necessary to provide adequate notice of the nature of the proposed amendment, with changes shown by striking through portions to be deleted and underlining portions to be added.

(e) Notwithstanding Article 1A of Chapter 125 of the General Statutes, reference copies of the compilation, supplements, and recompilations of the rules, and the North Carolina Register shall



be distributed by the Director as soon after publication as practicable, without charge, only to the following officials and departments:

- (1) One copy to each county of the State, which copy may be maintained for public inspection in the county in a place determined by the county commissioners; one copy to the Administrative Rules Review Commission; one copy each to the clerk of the Supreme Court of North Carolina and the clerk of the North Carolina Court of Appeals; one copy each to the libraries of the Supreme Court of North Carolina and the North Carolina Court of Appeals; one copy to the Administrative Office of the Courts; one copy to the office of the Governor; and five copies to the Legislative Services Commission for the use of the General Assembly;
- (2) Upon request, one copy to each State official and department to which copies of the appellate division reports are furnished under G.S. 7A-343.1;
- (3) Five copies to the Division of State Library of the Department of Cultural Resources, pursuant to G.S. 125-11.7; and
- (4) Upon request, one copy of the North Carolina Register to each member of the General Assembly.

(f) The Director shall make available to persons not listed in subsection (e) copies of the compilation, supplements, and recom compilations of the rules and the North Carolina Register, and shall make available to all persons copies of other public documents filed in the Office of Administrative Hearings. The Director shall set a fee to be charged for publications and documents made available under this subsection at an amount that covers publication, copying, and mailing costs. All monies received by the Office of Administrative Hearings pursuant to this subsection shall be deposited in the State treasury in a special funds account to be held in trust for the Office of Administrative Hearings to defray the expense of future recompilation, publication, and distribution of such documents. All monies involved shall be subject to audit by the State Auditor.

(g) Notwithstanding any other provision of law, the Employment Security Commission shall, within 15 days of adoption, file all rules adopted by it with the Director for public inspection and publication purposes only. The Director shall compile, make available for inspection, and publish the rules filed under this subsection in the same manner as is provided for other rules.

§ 150B-64. Judicial and official notice. -- Judicial or official notice shall be taken of any rule effective under this Article.

STATE OF NORTH CAROLINA

IN THE OFFICE OF

COUNTY OF WAKE

ADMINISTRATIVE HEARINGS

ORDER

Under the provisions of G.S. 7A-752, as amended by Section 15, Chapter 1111 of the 1987 Session Laws (Regular Session 1988), Administrative Law Judge Beecher Reynolds Gray is designated Senior Administrative Law Judge.

This the 13th day of July, 1988.

s/ Robert A. Melott  
Chief Administrative Law Judge

*[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]*

U.S. Department of Justice  
Civil Rights Division

WBR:MAP:PAR:dvs  
DJ 166-012-3  
W1505  
W3283

Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128

July 14, 1988

Jesse L. Warren, Esq.  
City Attorney  
P.O. Drawer W-2  
Greensboro, North Carolina 27402

Dear Mr. Warren:

This refers to the annexation (Ordinance No. 88-64) and the designation of the annexed area to District 4 for the City of Greensboro in Guilford County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on May 16, 1988.

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division

By:

Gerald W. Jones  
Chief, Voting Section

## TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Council for the Hearing Impaired, Division of Vocational Rehabilitation Services intends to adopt regulations cited as 10 NCAC 20F .0401 - .0418.*

*The proposed effective date of this action is December 1, 1988.*

*The public hearing will be conducted at 4:00 p.m. on September 8, 1988 at Lord Auditorium, Pack Memorial Library, 67 Haywood Street, Asheville, N.C.*

*Comment Procedures: Any interested person may present his/her comments at the hearing for a maximum of ten minutes or by submitting a written statement. Any person wishing to make a presentation at the hearing should contact: Jackie Stalnaker, Division of Vocational Rehabilitation Services, P.O. Box 26053, Raleigh, NC 27611, (919) 733-3364 by September 7, 1988. The hearing record will remain open for written comments from August 9, 1988 through September 7, 1988. Written comments must be sent to the address above and must state the proposed rule or rules to which comments are addressed. Fiscal information is also available upon request from the same address.*

### CHAPTER 20 - VOCATIONAL REHABILITATION

#### SUBCHAPTER 20F - COUNCIL FOR THE HEARING IMPAIRED

#### SECTION .0400 - COMMUNICATIONS SERVICES PROGRAM

##### .0401 PURPOSE OF RULES

The purpose of the rules in this Section is to specify the eligibility requirements, application procedures, distribution process and responsibilities of recipients and various agencies under the North Carolina Communications Services Program for the Deaf, Hearing and Speech Impaired required by G.S. 143B-216.5A and G.S. 143B-216.5B.

Statutory Authority G.S. 143B-216.5A; 143B-216.5B.

##### .0402 DEFINITIONS

The definitions of the terms defined in G.S. 143B-216.5A(b) apply to all the rules in this Section. In addition, the following terms have the meaning specified in this Rule, except where the context clearly indicates a different meaning:

- (1) "Council" means the North Carolina Council for the Hearing Impaired or its staff.
- (2) "Deaf-blind person" means a deaf person, as defined in G.S. 143B-216.5A, who is also certified as legally blind.
- (3) "Equipment set" means any one or more of the following:
  - (a) ring signaling device as defined in G.S. 143B-216.5A;
  - (b) telebraille device as defined in this Rule;
  - (c) telecommunications device for the deaf, hearing or speech impaired, or TDD as defined in G.S. 143B-216.5A; or
  - (d) volume control handset as defined in G.S. 143B-216.5A.
- (4) "Program" means the North Carolina Communications Services Program for the Deaf, Hearing and Speech Impaired, by which the council provides equipment sets capable of serving the needs of deaf, hearing-impaired and speech-impaired subscribers as required under G.S. 143B-216.5B.
- (5) "Recipient" means the user of the equipment set or the parent, person standing in loco parentis or legal guardian of a minor user who is at least nine years of age but under 18 years of age.
- (6) "Regional center" means a regional community service center for the hearing impaired that is operated by the Department of Human Resources or an independent community service center for the deaf and hearing impaired.
- (7) "Subscriber unit" means a single dwelling which receives basic telephone service and is subject to a monthly service charge for each access line.
- (8) "Telebraille device" means a TDD which has a modem connected to a braille machine which prints out embossed braille characters on a paper roll for a deaf-blind person to read.
- (9) "User" means a deaf, hearing-impaired or speech-impaired person or deaf-blind person within a subscriber unit for whose use the equipment set is provided. There may be multiple users in a subscriber unit.

Statutory Authority G.S. 143B-216.5A; 143B-216.5B.

##### .0403 COUNCIL RESPONSIBILITIES

The council shall:

- (1) provide equipment sets to recipients as prescribed by the rules in this Section, and
- (2) provide training in the use of equipment sets for recipients who desire training.

*Statutory Authority G.S. 143B-216.5B.*

**.0404 INFORMATION CONCERNING THE PROGRAM**

Organizations serving the deaf, hearing impaired and speech impaired and publishers of newsletters for these groups who wish to receive written information regarding the program shall contact the council and request that their names be placed on a mailing list to receive such information.

*Statutory Authority G.S. 143B-216.5B.*

**.0405 APPLICATION INFORMATION AND PROCEDURES**

(a) Interested persons may request an application packet by calling or writing the council at P.O. Box 26053, Raleigh, N.C. 27611, (919) 733-3364, or by requesting one from any of the regional centers or any local division office. The application packet shall include:

- (1) a brochure which contains:
  - (A) a description of the obligations of the council to the recipient;
  - (B) a description of the rights and responsibilities of the recipient under the program;
  - (C) a description of the application process;
  - (D) a description of the council and its role as liaison to the deaf, hearing-impaired and speech-impaired community; and
  - (E) office telephone numbers of the regional centers;
- (2) instructions for submitting reports and statements certifying that the applicant is deaf, hearing-impaired, speech-impaired, or deaf-blind;
- (3) a form for the recipient to sign indicating that the recipient understands and agrees with the rights and responsibilities of the recipient and desires services of the program;
- (4) a standard application form calling for the following information:
  - (A) the full name, age, and address of the recipient and all users of the equipment set;
  - (B) telephone number, the name and address of the person to whom the telephone service is billed, and the name and address of the telephone company;

(C) personal and financial information regarding all family members necessary to determine financial eligibility according to the provisions of Rule .0410 of this Section; and

(D) copies of driver's license or other proof of identification and residence of the recipient; and

(5) a form for recipients acting for minor users to sign indicating their agreement that equipment sets received under this program may be transferred to the user upon the user's 18th birthday, upon the request of the minor user according to the provisions of Rule .0416 of this Section.

(b) Providing false or misleading information on the application shall subject any applicant selected as a recipient to forfeiture of any equipment set provided.

(c) The regional centers shall provide assistance in completing application forms upon request.

(d) Applicants shall complete and sign all forms, attach all necessary documentation, and mail the completed application packet, including a self-addressed stamped postcard, to the address specified on the application.

(e) Upon receipt of completed application packets, the council shall acknowledge receipt by returning the applicant's self-addressed postcard. The council shall verify an applicant's eligibility within 45 days following receipt of the completed application, if possible. If the council cannot verify eligibility within 45 days, it shall inform the applicant in writing as soon as possible within the 45-day period indicating the problem and solicit clarification and additional information in order to determine the applicant's eligibility.

*Statutory Authority G.S. 143B-216.5B.*

**.0406 PRIORITY AND LIMITATIONS FOR DISTRIBUTION**

(a) Equipment sets shall be distributed only to applicants who meet the eligibility criteria specified in Rules .0407 through .0411 of this Section and shall be distributed in the following priority order:

- (1) those who do not have the appropriate equipment set, who are 18 years old or older, and who have the most severe hearing impairment;
- (2) those who do not have the appropriate equipment set, who are under 18 years of age, and who have the most severe hearing impairment with those who are older within this priority category receiving higher priority according to age;

- (3) those who have obsolete electro-mechanical equipment sets which are not feasible to continue to operate, who are 18 years old or older, and who have the most severe hearing impairment;

(b) Equipment sets shall be distributed according to the earliest postmark date of each completed application within each priority category set forth in (a) of this Rule. Equipment sets shall be distributed to eligible recipients within the limits of available funding.

*Statutory Authority G.S. 143B-216.5B.*

#### .0407 CERTIFICATION OF IMPAIRMENT

(a) A prospective user shall be certified as deaf, hearing impaired, speech impaired or deaf-blind to be eligible to receive an equipment set.

(b) To be certified a recipient shall submit a written report or statement from a licensed physician, licensed audiologist, or licensed speech pathologist certifying that the person is deaf, hearing-impaired, speech-impaired, or deaf-blind and stating the nature and degree of the impairment. In addition, deaf-blind recipients shall submit a statement from a licensed physician stating the nature and degree of visual impairment.

(c) Applicants may submit copies of certification statements or reports that are on file with a state or federal agency if such statements or reports meet the requirements in (b) of this Rule.

(d) The certification reports or statements shall be included with the application when it is submitted.

*Statutory Authority G.S. 143B-216.5B.*

#### .0408 AGE REQUIREMENTS

A minor under nine years of age shall not be eligible as a user under the program.

*Statutory Authority G.S. 143B-216.5B.*

#### .0409 RESIDENCY REQUIREMENTS

(a) An applicant shall be a permanent legal resident of the State of North Carolina to be eligible to receive an equipment set except as provided in (e) of this Rule.

(b) To be permanent legal residents of North Carolina, applicants shall not only live in the state, but also have the intention of making their permanent home in this state to which, whenever absent, they intend to return.

(c) Unemancipated minors have the residency of their parents, person standing in loco parentis, or if the parents are separated or divorced, the residency of the parent with legal custody. For

purposes of this Rule, "person standing in loco parentis" refers to one who has put himself/herself in the place of a lawful parent by assuming the rights and obligations of a parent without formal adoption.

(d) Residence continues until a new one is acquired. When a new residence is acquired, all former residences terminate.

(e) The residency requirement shall not apply to a student who is 18 years of age or older who attends an accredited North Carolina educational institution or to a child or spouse of a temporary resident of North Carolina who is a member of the United States military if the following requirements are met:

- (1) at the time of application, the applicant expects to remain in North Carolina for not less than 270 days;
- (2) the applicant submits proof of military or student status by attaching a copy of military I.D. or student I.D. to the application form; and
- (3) the council is able to verify the proof of status submitted.

*Statutory Authority G.S. 143B-216.5B.*

#### .0410 FINANCIAL ELIGIBILITY

(a) An applicant shall meet the council's financial needs test to be eligible to receive an equipment set.

(b) Applicants for an equipment set who are included in public assistance grants such as AFDC, SSDI, SSI or the Food Stamp Program shall automatically meet the financial needs test upon submission of documentation of their eligibility for the public assistance program.

(c) Financial eligibility for applicants not included under (b) of this Rule shall be determined by applying the following economic scale:

Family Size	Gross Monthly Income
1	\$ 926
2	\$1,209
3	\$1,493
4	\$1,778
5	\$2,063
6	\$2,228
7	\$2,400
8	\$2,454

(d) An applicant's family shall include the user and the following persons living in the same household as the user if the user is 18 years of age or older or if the user is less than 18 years of age and is married:

- (1) the user's spouse;
- (2) the user's children under 18 years of age;
- (3) other individuals related to the user by blood, marriage, or adoption if the other

individuals have no income and do not have parent(s) or spouse(s) who have income living in the same household; and

- (4) the user's children of any age who are temporarily living away from the household while attending school if they are being claimed as dependents by the user for tax purposes.

(e) An applicant's family shall include the user and the following persons living in the same household as the user if the user is less than 18 years of age and is not married:

- (1) the user's parents, not including step-parents;
- (2) siblings or half-siblings of the user, but not step-siblings, if the siblings are unmarried and less than 18 years of age;
- (3) siblings or half-siblings of the user, but not step-siblings, if the siblings are 18 years of age or older and have no income; and
- (4) other individuals related to the user by blood, marriage, or adoption if the other individuals have no income and do not have parent(s) or spouse(s) who have income living in the same household.

(f) In (e)(2) and (3) of this Rule, siblings who are temporarily living away from the household while attending school may be considered as living in the same household if they are being claimed as dependents by their parents for tax purposes and the parents are in the same household as the user.

(g) Gross monthly income of the family members shall be considered in the financial needs test. Examples of income may include such items as the following:

- (1) salaries and wages;
- (2) earnings from self-employment;
- (3) earnings from stocks, bonds, savings accounts, rentals, and all other investments;
- (4) public assistance money;
- (5) unemployment compensation;
- (6) alimony and child support payments received;
- (7) Social Security benefits;
- (8) Veteran's Administration benefits;
- (9) retirement and pension payments;
- (10) worker's compensation; and
- (11) supplemental security income benefits.

(h) The following shall be excluded in the computation of gross monthly income:

- (1) combined, available cash in the bank not to exceed six times the gross monthly income for the family size;
- (2) tax value of property held; and

- (3) income that children may earn from babysitting, lawn mowing, or other miscellaneous tasks.

(i) The time period to be used as the basis for computing gross monthly income shall be the month preceding the date of application. For income that is not received on a monthly basis, the monthly pro rata share of the most recent receipt of the income shall be included in the computation.

*Statutory Authority G.S. 143B-216.5B.*

#### **.0411 ELIGIBILITY FOR REAPPLICATION**

Recipients who have received equipment sets are not eligible to reapply for new equipment sets until five years after the date of receipt of the initial equipment set. However, recipients may renew lease agreements on the original equipment set according to Rule .0413(b) of this Section.

*Statutory Authority G.S. 143B-216.5B.*

#### **.0412 PROVISION OF EQUIPMENT SETS**

(a) Only one equipment set shall be provided per subscriber unit that is the permanent, legal residence of one or more deaf, hearing-impaired, speech-impaired, or deaf-blind eligible users. In the event that two or more recipients share a common, permanent, legal residence constituting a subscriber unit, equipment in excess of one equipment set shall be returned to the local regional center.

(b) The equipment set shall be granted in the name of the recipient. There shall be only one recipient per subscriber unit. Recipient status shall be granted to an adult user within the subscriber unit. In the absence of an adult user within the subscriber unit, recipient status shall be granted to the parent, person standing in loco parentis, or legal guardian residing with a minor user in the subscriber unit.

*Statutory Authority G.S. 143B-216.5B.*

#### **.0413 OWNERSHIP: LEASE: LIABILITIES**

(a) All equipment sets distributed according to the rules in this Section shall remain the property of the State of North Carolina. Each recipient shall sign a form indicating he/she understands and accepts the requirements of the lease agreement regarding ownership, liability, and responsibilities.

(b) Contingent upon the recipient's compliance with the rules in this Section, all equipment sets shall be leased free of charge to the recipient for a period of five years. At the end of the five-year

period, the recipient may renew the lease agreement for another five-year lease of the equipment set. At such time, the equipment set shall be returned to the nearest regional center for a visual check and records update.

(c) Equipment sets shall not be sold, loaned, or otherwise transferred from the possession of the original recipient. Transfers shall subject the recipient to liability for the full replacement cost of the equipment set.

*Statutory Authority G.S. 143B-216.5B.*

**.0414 TELEPHONE BILLS: MAINTENANCE:  
REPORTING LOSS/DAMAGE/THEFT**

(a) The recipient shall be responsible for the payment for all telephone services incurred with the use of the equipment set.

(b) While the equipment set is under warranty, the recipient shall report any needed repairs to the council according to the directions given by the council at the time the equipment set is leased to the recipient.

(c) All ordinary expense of maintenance and repair of the equipment set not covered by warranty or after the warranty expires shall be the responsibility of the recipient. If an equipment set is damaged, lost, or destroyed due to negligence of the recipient and not due to ordinary wear and tear, the recipient shall be held responsible for the cost of replacing the lost or destroyed equipment set or restoring the damaged equipment set to its original condition.

(d) The recipient shall immediately inform the regional center if the equipment is lost, stolen, or damaged. If equipment is stolen, local police shall be informed and a copy of the police report shall be forwarded by the recipient to the regional center within five days of the date the theft was reported.

*Statutory Authority G.S. 143B-216.5B.*

**.0415 RELOCATION OR DEATH OF  
RECIPIENTS**

(a) If a recipient permanently relocates outside of North Carolina, the recipient shall give the council written notice and return the equipment set to the nearest regional center prior to the move. If a recipient dies, written notice shall be given by the deceased's estate and the equipment set returned to the nearest regional center within 30 days after the recipient's death.

(b) If there are other users residing within a subscriber unit where the recipient dies or relocates outside of North Carolina, one of the users shall apply for recipient status according to the

procedures specified in Rule .0405 of this Section.

(c) If a recipient plans to relocate within North Carolina, the recipient shall give the council written notice of the new address and the date of the planned move prior to moving.

(d) The equipment set shall be returned to the regional center if all users permanently depart from the subscriber unit.

*Statutory Authority G.S. 143B-216.5B.*

**.0416 TRANSFER TO MINOR USERS**

In cases where the recipient is not a user but the parent, person standing in loco parentis, or legal guardian of a minor user, the recipient shall give the council written notice when the minor user becomes 18 years of age. The equipment set may be transferred to the minor user upon receipt of a written request for transfer from the minor and receipt of all appropriate, signed responsibility forms. The council may make the transfer by adjusting the records to reflect the proper recipient of the unit.

*Statutory Authority G.S. 143B-216.5B.*

**.0417 REPORTS FROM LOCAL AGENCIES**

(a) Each county manager shall inform the council of the name, address and telephone number of the hospital, or hospitals if more than one, in the county which has a TDD installed and in operation as required under G.S. 143B-216.5B(f).

(b) Each county sheriff's department, city police department, and firefighting agency shall inform the council of the telephone number with which a TDD is available as required under G.S. 143B-216.5B(f).

(c) Each 911 emergency number system and each agency receiving automatically routed calls through a 911 emergency number system shall inform the council of the availability and operation of a TDD unit.

*Statutory Authority G.S. 143B-216.5B.*

**.0418 WAIVER OF RULES**

(a) The state coordinator of the council in concert with the division director may waive any rule in this Section provided the issuance of the waiver is for good cause and does not waive any statutory requirement.

(b) Requests for waivers shall be sent to the State Coordinator, Council for the Hearing Impaired, P.O. Box 26053, Raleigh, N.C. 27611.

(c) The request shall be in writing and shall contain:



- (1) the name, address, and telephone number of the requester;
  - (2) the rule number(s) and title of the rule(s) or requirements for which waiver is being sought; and
  - (3) a statement of the facts necessitating the request with supporting documents as appropriate.
- (c) Prior to issuing a decision on the waiver request, the state coordinator and the division director may request additional information or consult with additional parties as appropriate.
- (d) A decision regarding the waiver request shall be issued in writing by the state coordinator and shall state the reasons why the request was granted or denied and any special conditions relating to the request.

Statutory Authority G.S. 143B-216.5B.

## TITLE 21 - OCCUPATIONAL LICENSING BOARDS

*Notice is hereby given in accordance with G.S. 150B-12 that the the North Carolina Board of Nursing intends to amend regulations cited as 21 NCAC 36 .0219 and .0223.*

*The proposed effective date of this action is January 1, 1989.*

*The public hearing will be conducted at 2:00 p.m. on September 28, 1988 at Shell Island Resort Hotel, Wrightsville Beach, North Carolina.*

*Comment Procedures: Any person wishing to present oral testimony relevant to proposed rule may register at the door before hearing begins and present hearing officer with a written copy of testimony. Written statements may be directed, five days prior to the hearing date, to the North Carolina Board of Nursing, P. O. Box 2129, Raleigh, NC 27602.*

## CHAPTER 36 - BOARD OF NURSING

### SECTION .0200 - LICENSURE

#### .0219 TEMPORARY LICENSE

(a) The Board of Nursing ~~shall~~ may issue a Status A nonrenewable temporary license to ~~persons who have~~ persons who have under the following circumstances:

- (1) A person is eligible for a Status A nonrenewable temporary license if that person has:

- ~~(4) (A) graduated from approved nursing programs, filed a completed examination application form with correct fee, and meet meets all qualifications for licensure by examination in North Carolina, and is scheduled for the licensure examination at the first opportunity after graduation;~~
- ~~or~~
- ~~(2) filed a completed application for licensure without examination with correct fee and provided validation of current license in another jurisdiction; or~~
- ~~(3) (B) filed an application for licensure without examination with correct fee and provided verification of awaiting the results on of the first writing of the examination developed by the National Council of State Boards of Nursing, Inc. in another jurisdiction.~~
- (2) The Status A nonrenewable temporary license expires on the lesser of six months or the date a full license is issued or notice of failure of the examination is received.
- (3) Status A temporary license authorizes the holder to:
  - (A) practice only in nursing situations where direct supervision by a registered nurse is available and at a standard of care of a fully licensed nurse; and
  - (B) perform direct patient care only, i.e., may not accept authority for nor assume responsibility to assign, supervise, or direct other nursing personnel; and
  - (C) participate in such orientation and continuing education activities as the employer offers to prepare the holder of a Status A temporary license for the employment position.
- (4) Holders of valid Status A temporary license shall identify themselves as R.N. Applicant (R.N.A.) or L.P.N. Applicant (L.P.N.A.), as the case may be, after signatures on records.
- (5) Upon expiration, revocation, or return of the Status A temporary license, the individual is ineligible to practice nursing as described in Paragraph (a)(3) of this Rule.
- ~~(b) A temporary license will be issued to only those graduates who make application and are scheduled for the licensure examination at the first opportunity after graduation. Requests for exceptions must be submitted to the board in writing.~~
- (b) The board may issue a Status P nonrenewable temporary license to persons who have filed a completed application for licensure without examination with correct fee and pro-

vided validation of an active license in another jurisdiction.

- (1) The Status P nonrenewable temporary license expires on the lesser of six months or the date a full license is issued or when it is determined the applicant is not qualified to practice nursing in North Carolina.
- (2) Status P temporary license authorizes the holder to practice nursing in the same manner as a fully licensed R.N. or L.P.N., whichever the case may be.
- (3) Holders of valid Status P temporary license shall identify themselves as Registered Nurse Petitioner (R.N.P.) or L.P.N. petitioner (L.P.N.P.), as the case may be, after signatures on records.
- (4) Upon expiration, revocation, or return of the Status P temporary license, the individual is ineligible to practice nursing as described in Paragraph (b)(2) of this Rule.
- (e) The nonrenewable temporary license expires on the lesser of six months or the date a license is issued or notice of failure of the examination is received or it is determined the applicant is not qualified to practice nursing in North Carolina.
- (d) Upon expiration, revocation or return of the temporary license, the individual is ineligible to practice nursing as described in Paragraph (e) of this Rule.
- (e) The temporary license authorizes the holder to:
  - (1) practice only in nursing situations where direct supervision by a registered nurse is available and at the standard of care of a fully licensed nurse; and
  - (2) perform direct patient care only, i.e., may not accept authority for nor assume responsibility to assign, supervise or direct other nursing personnel; and
  - (3) participate in such orientation and continuing education activities as the employment position.
- (f) Holders of valid temporary license shall identify themselves as R.N. Applicant (App.) or L.P.N. Applicant (App.) as the case may be, after signatures on records.

Statutory Authority G.S. 90-171.33.

#### .0223 CONTINUING EDUCATION PROGRAMS

- (c) Approval process.
- (6) The board will publish a list of approved programs at least quarterly. Approval of continuing education programs will be included in published reports of board

action. A list of approved programs will be maintained in the board's file.

Statutory Authority G.S. 90-171.42.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-12 that the Board of Podiatry Examiners intends to adopt regulations cited as 21 NCAC 52 .0209, .0303, .0610; amend .0102 - .0103, .0201 - .0202, .0204 - .0208, .0301 - .0302, .0402 - .0404, .0408, .0601 - .0606, .0701 - .0703, .1002, .1005, .1203 - .1204, .1301 - .1302; repeal .0203, .0401, .0405 - .0407, .0501 - .0504, .0607 - .0609, .0801 - .0803, .0901 - .0908, .1101 - .1107, .1201.*

*The proposed effective date of this action is December 1, 1988.*

*The public hearing will be conducted at 1:00 p.m. on September 16, 1988 at The office of:*

*Dr. C. Jeff Mauney  
707 North Morgan Street  
Shelby, North Carolina 28150.*

*Comment Procedures: Any person may present oral or written testimony or data relevant to the action proposed at the public rulemaking hearing to be held on Friday, September 16, 1988 at 1:00 p.m. at the office of Dr. Jeff Mauney, 707 North Morgan Street, Shelby, North Carolina 28150 by appearing at the hearing or mailing the material or data to Dr. C. Jeff Mauney, 707 North Morgan Street, Shelby, North Carolina 28150 in advance of the hearing.*

#### CHAPTER 52 - BOARD OF PODIATRY EXAMINERS

##### SECTION .0100 - ORGANIZATION OF THE BOARD

##### .0102 MEMBERSHIP

The board shall be composed of three podiatrists licensed to practice podiatry in the State of North Carolina, who shall have been practicing in the state for at least five years. They will be elected by the North Carolina Podiatry Society and shall serve a three year term. One member shall be elected at each annual meeting of the North Carolina Podiatry Society. A member may serve only two consecutive terms. The board shall consist of four members appointed by the Governor as provided in the General Statutes.

Statutory Authority G.S. 90-202.4.

**.0103 ANNUAL MEETING; ELECTION AND OFFICERS**

(a) The annual business meeting of the board shall be held ~~immediately following the annual meeting of the North Carolina Podiatry Society~~ for the purpose of reviewing the previous year's activities, planning the coming year's business and electing officers.

(b) The board will elect the following officers whose duties ~~will be~~ are specified as follows:

(1) President:

(A) shall serve as presiding officer at all meetings or hearings held by the board;

(B) shall assign subjects to board members for examination;

(C) shall supervise all examinations given by the board.

(2) Vice-President:

(A) shall assume all duties of the president in event of his absence;

(B) shall assume the office of president should that office ~~be vacated.~~ become vacant.

(3) Secretary: ~~Treasurer~~

(A) shall keep ~~an~~ accurate record of all meetings, hearings, and transactions of the board;

(B) ~~Shall keep an accurate record of all financial matters of the board, and annually shall have the financial records verified by the office of the State Auditor; all correspondence relating to matters before the board shall be sent from the office of and over the signature of the secretary;~~

(C) ~~Shall annually submit a written report of the board's activities (including financial report) to the board, the Governor of the State of North Carolina, Secretary of State, and the North Carolina Podiatry Society; all forms and records of the board, except those pertaining to finance, shall be held in and issued from the office of the secretary;~~

(D) ~~All correspondence relating to matters before the board shall be sent from the office of and over the signature of the secretary-treasurer; the office of the board shall be in Raleigh and the mailing address of the board is Post Office Box 1088, Raleigh, North Carolina 27602.~~

(E) ~~All forms and records of the board shall be held in and issued from the office of the secretary-treasurer;~~

(F) ~~The office of the board shall be in the office of the secretary-treasurer, Dr. N. F.~~

~~Costin, Jr., 1230 Medical Center Drive, Wilmington, North Carolina, 28401.~~

(4) Treasurer:

(A) shall keep an accurate record of all financial matters of the board, and annually shall have the financial records verified by the Office of the State Auditor;

(B) shall annually submit a written report of the board's financial activities to the board, the Governor of the State of North Carolina, Secretary of State, and the North Carolina Podiatry Society.

(c) The election of officers and membership to the board shall be in accordance with the General Statutes of North Carolina, Chapter 90-202.4.

History Note: Statutory Authority G.S. 90-202.4.

**SECTION .0200 - EXAMINATION AND LICENSING**

**.0201 APPLICATION**

Anyone who meets the statutory requirements of these statutes and wishes to apply for examination may do so by submitting written application to the office of the secretary ~~treasurer~~ of the board at ~~1230 Medical Center Drive, Wilmington, North Carolina, 28401.~~ Post Office Box 1088, Raleigh, North Carolina 27602. Such application shall be made on BPE Form No. 1 (Application for Examination) or BPE Form No. 2 (Application for Reciprocity). This form will require the applicant to provide the board with detailed information in regards to the applicant's educational background, his training in podiatry, his family background, and detailed information in regards to his personal and moral background. Applicants must also ~~shall~~ furnish the board with certification of graduation from a four year high school, completion of at least two years of undergraduate college education, and graduation from an accredited college of podiatric medicine as provided in the statutes. The application will state the amount of the fee, which is non-refundable. The application must be accompanied by the application fee, to be as determined by the board, but not to exceed ~~one~~ two hundred dollars (\$200.00). Applications must also be notarized by a Notary Public in good standing. Applications shall also include Release of Information Forms.

Statutory Authority G.S. 90-202.5; 90-202.6; 90-202.7.

**.0202 EXAMINATION**

The board shall conduct an examination of all qualified applicants at least once each year ~~during the month of June in the City of Raleigh, North Carolina.~~ at such time and at such place as the board may choose. This examination may be written, oral, or ~~practical;~~ clinical or any combination of written, oral, and ~~practical.~~ clinical as provided by statute. Each board member will ~~prepare and administer examinations in the subjects assigned to him by the president.~~ These subjects may include anatomy, physiology, bacteriology, chemistry, dermatology, podiatry, surgery, materia medica, pharmacology, and pathology.

*Statutory Authority G.S. 90-202.6.*

#### .0203 TEMPORARY LICENSE (REPEALED)

*Statutory Authority G.S. 90-202.6.*

#### .0204 RE-EXAMINATION

Unsuccessful candidates for licensure may apply to the board for re-examination within a period of one year and be entitled to re-examination upon the payment of the examination fee, which fee will be specified in the application form and shall not to exceed one hundred dollars (\$100.00). two hundred dollars (\$200.00).

*Statutory Authority G.S. 90-202.6.*

#### .0205 PRACTICE ORIENTATION

The board may require each applicant to spend a up to one week as a practice orientation period to better equip them to practice podiatry in North Carolina in the office of and under the direction of a podiatrist practicing in North Carolina. Such orientation shall take place only in those offices approved by the board, and assignment of orientation office shall be ~~made by the secretary treasurer.~~ considered as a portion of the clinical examination in podiatry. The license shall not be issued until the orientation requirement has been fulfilled. Such orientation period shall be considered as a portion of the practical examination in podiatry.

*Statutory Authority G.S. 90-202.4(g); 90-202.6(a)(b).*

#### .0206 LICENSING

Upon the successful completion of all the requirements of the board, each successful candidate shall be issued a certificate, license ( BPE Form No. 2, 3,) which shall be numbered and contain the applicant's name and date of issuance. This certificate shall be signed by the

president and vice president members of the board and be attested to by the seal and signature of the secretary treasurer of the board. affixing the official seal of the Board of Podiatry Examiners.

*Statutory Authority G.S. 90-202.6; 90-202.7.*

#### .0207 ANNUAL RENEWAL OF LICENSE

The secretary ~~treasurer~~ of the board shall mail to the last known address of each license holder each year a form on which to apply for renewal of his license (BPE Form No. 3 4). This form may request such information as the board feels is required to keep accurate records of those holding licenses to practice podiatry in North Carolina. This application, along with the renewal fee, which will be determined by the board but shall not exceed fifty dollars (\$50.00), must be received by the secretary treasurer of the board on or before the first day of July of each year. Upon receipt of application and fee, the secretary treasurer shall provide each podiatrist with a certificate of renewal specifying the period of time covered by the renewal certificate and signed by the secretary treasurer. The penalties for failure to comply are specified in General Statutes 90- ~~106.~~ 202.10.

*Statutory Authority G.S. 90-202.10.*

#### .0208 CONTINUING EDUCATION

An additional requirement for issuance of the annual renewal certificate shall be certification to the board of proof of having complied with the Continuing Education Clause Provisions of the General Statutes. The board shall notify all podiatrists of the number of hours which shall be required and what programs, seminars, or other courses of study will be accepted as fulfilling this requirement. The board will consider any other courses a license holder wishes to attend if ample information is provided to the board. The board may provide a form (BPE No. 4 5) which would include provides for dates, location, and faculty of such programs and which would is to be signed by an executive officer of the organization or institution sponsoring such programs. Verification is required as provided by statute.

*Statutory Authority G.S. 90-202.11.*

#### .0209 APPLICANTS LICENSED IN OTHER STATES

If an applicant for licensure is already licensed in another state to practice podiatry, the board shall issue a license to practice podiatry in the

State of North Carolina only upon evidence that said podiatrist has complied with the requirements as set forth in General Statute 90-202.7 of the Podiatry Practice Act. Presentation of such evidence is the responsibility of the podiatrist seeking reciprocity to practice in the State of North Carolina. This evidence shall include verification from the Board of Podiatry Examiners of the state where applicant has last practiced that applicant is in good standing, has no disciplinary action pending, and history of previous disciplinary action, if any.

*Statutory Authority G.S. 90-202.7.*

#### SECTION .0300 - PROFESSIONAL CORPORATIONS

##### .0301 REGISTRATION

No podiatrist or group of podiatrists may operate in the State of North Carolina as a professional corporation without first obtaining from the board a certificate of registration as required by the General Statutes. The application should contain the name and address of this corporation and the names of all the officers and shareholders of the corporation. If the board finds that no disciplinary action is pending against any of the officers or shareholders, upon payment of a fifty dollar (\$50.00) registration-fee, it shall issue a certificate of registration (PC Form No.2) which will remain in effect until January 1 of the following year.

*Statutory Authority G.S. 55B-10.*

##### .0302 ANNUAL RENEWAL

Upon written application to the board on or before January 1 of each ~~year~~, year and upon payment of a fee of twenty-five dollars (\$25.00), an annual renewal certificate (PC Form No.3) shall be issued by the board. Failure to comply will result in penalty as specified in the General Statutes.

*Statutory Authority G.S. 55B-11.*

##### .0303 PENALTIES

If a corporation does not apply for renewal of its certificate of registration within 30 days after the date of the expiration of such certificate, the certificate of registration shall be automatically suspended and may be reinstated within the calendar year upon the payment of the required renewal fee plus a penalty of ten dollars (\$10.00).

*Statutory Authority G.S. 55B-11.*

#### SECTION .0400 - REVOCATION OR SUSPENSION OF LICENSE

##### .0401 INITIATION OF PROCEEDINGS (REPEALED)

*Statutory Authority G.S. 90-202.8.*

##### .0402 HEARINGS

(a) Before the board shall revoke or ~~rescind~~ suspend any license granted by it to any podiatrist, it will give ~~to~~ the podiatrist a written notice indicating the general nature of the charges, accusation, or complaints preferred against him and stating that the licensee will be given an opportunity to be heard concerning such charges or complaints at ~~a time the date,~~ hour and place stated in such notice. ~~or to be thereafter fixed by the board,~~ and shall hold a public hearing not less than 30 days from the date of the service of such notice upon such licensee, at which he may appear personally or through counsel, may cross-examine witnesses and present evidence in his own behalf. Provided, however, the board may summarily suspend a license where the public health, safety or welfare requires emergency action as provided in G.S. 150B-3(c). The notice shall include a reference to the sections of the statutes and rules involved. The board shall hold a public hearing not less than 15 days from the date of the service of such notice to such licensee, at which hearing he may personally or through counsel cross-examine witnesses and present evidence in his own behalf.

(b) A podiatrist who is mentally incompetent shall be represented at such hearing and shall be served with notice as herein provided by and through a guardian ad litem appointed by the clerk of the court of the county in which the podiatrist has his /her residence.

(c) ~~Such~~ The licensee or podiatrist may, if he desires, file written answers to the charges or complaints preferred against him within 30 days after the service of such notice, which answer shall become a part of the record but shall not constitute evidence in the case.

*Statutory Authority G.S. 90-202.8; 150B-38.*

##### .0403 SERVICE OF NOTICE

Any notice required by this Rule may be served either personally or by an officer authorized by law to serve process, or by registered mail, return receipt requested, directed to the licensee or applicant at his last known address as shown by the records of the board. If notice is served personally, it shall be deemed to have been served at the time when the officer delivers the notice of the person addressed. Where notice is served

by registered mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery of the notice to the addressee or refusal of the addressee to accept the notice. the rules shall be given personally or by certified mail, return receipt requested, directed to the licensee or applicant at his last known address as shown by the records of the board. If service cannot be accomplished either personally or by certified mail, it shall then be given as provided in G.S. 1A, Rule 4 (1).

*Statutory Authority G.S. 90-202.8; 150B-38.*

**.0404 PLACE OF HEARINGS**

Upon written request of the accused podiatrist, given to the secretary of the board 20 days after service of the charges of complaints against him, a hearing for the purpose of determining revocation or suspension of his license shall be conducted in the county in which such podiatrist maintains his residence, or at the election of the board, in any county in which the act or acts complained of occurred. In the absence of such request, the hearing shall be held at a place designated by the board, or as agreed upon by the podiatrist and the board. A hearing conducted by the board shall be held in the location as provided by statute.

*Statutory Authority G.S. 90-202.8; 150B-38(e).*

**.0405 TRIAL EXAMINER OR DEPOSITION (REPEALED)**

**.0406 EVIDENCE ADMISSIBLE (REPEALED)**

**.0407 FAILURE TO APPEAR (REPEALED)**

*Statutory Authority G.S. 90-202.8.*

**.0408 APPEAL**

A podiatrist whose license is revoked or suspended by the board may obtain a review of the decision of the board in the Superior Court of Wake County or in the superior court in the county in which the hearing was held or upon agreement of the parties to the appeal in any other superior court of the state, upon filing with the secretary of the board a written notice of appeal within 30 days after the date of the service of the decision of the board stating all exceptions taken to the decision of the board and indicating the court in which the appeal is to be heard. who is aggrieved by a final decision in a contested case, and who has exhausted all administrative remedies available may obtain judicial review of the decision of the board as provided by statute.

*Statutory Authority G.S. 90-202.8; 150B-43 to 150B-45.*

**SECTION .0500 - CERTIFICATION OF PODIATRIC ASSISTANTS**

**.0501 APPLICATION (REPEALED)**

**.0502 EXAMINATION (REPEALED)**

**.0503 CERTIFICATION (REPEALED)**

**.0504 ANNUAL RENEWAL (REPEALED)**

*Statutory Authority G.S. 90-202.6.*

**SECTION .0600 - FORMS USED BY THE BOARD**

**.0601 APPLICATION FOR EXAMINATION**

The application for examination (BPE Form No.1) will be used by all applicants who wish to take the examination for licensure. The form may be modified from time to time by the board. It shall require the applicant to furnish the board with detailed information regarding his education and personal, moral and family background, character. The form may be obtained from the office of the secretary-treasurer, Dr. N. F. Costin, Jr., 1230 Medical Center Drive, Wilmington, North Carolina, 28401. Secretary at Post Office Box 1088, Raleigh, North Carolina 27602.

*Statutory Authority G.S. 90-202.5.*

**.0602 CERTIFICATE OF LICENSURE**

The licensure certificate (BPE Form No. 2 3) will be the official license to practice podiatry in the State of North Carolina. It shall be issued by the board to all candidates who successfully complete the examination given by the board. The license will be numbered and it shall be signed by all ~~three~~ members of the board.

*Statutory Authority G.S. 90-202.6.*

**.0603 APPLICATION FOR RENEWAL**

The application for renewal of license (BPE Form No. 3 4) will be used to annually apply for renewal of the license to practice. The secretary-treasurer of the board shall mail this form to each license holder at the last known address in the month of May of each year. The license holder must complete the form and return it, along with the annual renewal fee to the secretary-treasurer prior to July 1 of each year. The form will require the license holder to inform the board of his current office address, his status in regard to practice (active, retired, etc.), and such other information as the board may require to maintain accurate records on the status of the profession within the state.

*Statutory Authority G.S. 90-202.10.*

**.0604 CERTIFICATE OF CONTINUING EDUCATION**

The secretary ~~treasurer~~ may provide each license holder with a form (BPE Form No. 4 5) used to certify that the licensee has met the requirements of the continuing education ~~Clause of the requirements as stated in~~ General Statutes.

*Statutory Authority G.S. 90-202.11.*

**.0605 CERTIFICATION FOR ESTABLISHING A PROFESSIONAL CORPORATION**

Prior to being registered with the Secretary of State of the State of North Carolina, each professional corporation shall obtain from the secretary ~~treasurer~~ of the board a ~~certification~~ certificate (PC Form No.2) that each and every shareholder of the proposed corporation is duly licensed to practice podiatry in the State of North Carolina.

*Statutory Authority G.S. 55B-10.*

**.0606 CERTIFICATE OF REGISTRATION OF PROFESSIONAL CORPORATION**

Every professional corporation shall annually (prior to ~~Feb. 1~~ February 1st of each year) apply to the board for a certificate of registration. ~~When the board determines that no disciplinary action is pending against any of the officers or shareholders of the corporation and if it appears that the corporation will be conducted in compliance with the statutes and the rules of the board, and upon payment of a fee, not to exceed fifty dollars (\$50.00) for initial registration, and not to exceed twenty-five dollars (\$25.00) for each renewal, the secretary treasurer of the board will issue to the professional corporation a certificate of registration (PC Form No.3).~~

*Statutory Authority G.S. 55B-11.*

**.0607 APPLICATION FOR EXAMINATION: PODIATRIC ASSISTANTS (REPEALED)**

**.0608 CERTIFICATE OF REGISTRATION: PODIATRIC ASSISTANTS (REPEALED)**

**.0609 ANNUAL RENEWAL: PODIATRIC ASSISTANTS (REPEALED)**

*Statutory Authority G.S. 90-202.4.*

**.0610 APPLICATION FOR EXAMINATION FOR PODIATRIST LICENSED IN OTHER STATES (RECIPROCITY)**

The application for examination for those already licensed in other states to practice podiatric medicine (BPE Form No. 2) will be used by ap-

plicants who request such consideration. The requirements shall be the same as for the applicant mentioned in Rule .0601 of this Section plus any other that the Board of Podiatry Examiners may deem necessary and in keeping with the General Statutes. Application forms may be obtained from the office of the secretary of the board.

*Statutory Authority G.S. 90-202.7.*

**SECTION .0700 - PETITIONS FOR RULES**

**.0701 PETITION FOR RULEMAKING HEARINGS**

Any person wishing to submit a petition requesting ~~the adoption, amendment or repeal of a rule by~~ the board shall address a petition to: Board of Podiatry Examiners, ~~1230 Medical Center Drive, Wilmington, North Carolina, 28401, ATTENTION: Dr. N. F. Costin, Jr., Secretary-Treasurer, Post Office Box 1088, Raleigh, North Carolina 27602.~~ The ~~container~~ caption of the petition should clearly bear the notation: RULEMAKING PETITION RE and then the subject area.

*Statutory Authority G.S. 150B-16.*

**.0702 CONTENTS OF PETITION**

The petition should include the following information:

- (1) an indication of the subject area to which the petition is directed. For example: "This is a petition is to hold a rulemaking hearing to amend Rule .0000"; ~~pertaining to Administrative Procedure Act filing requirements;~~
- (2) either a draft of the proposed rule or a summary of its contents;
- (3) reason ~~s~~ for the proposal;
- (4) the effect on existing rules or orders;
- (5) any data supporting the proposal;
- (6) effect of the proposed rule on existing practices in the area involved including cost factors;
- (7) names of those most likely to be affected by the proposed rule with addresses if reasonably known;
- (8) name(s) and address(es) of petitioner(s).

*Statutory Authority G.S. 150B-16.*

**.0703 DISPOSITION OF PETITIONS**

(a) The board will determine whether the public interest will be served by granting the request. Prior to making this determination, the board may request additional information from the petitioner(s); it may contact interested per-



sons or persons likely to be affected by the proposed rule and request comments; it may use any other appropriate method for obtaining information on which to base its determination. It will consider ~~all of~~ the contents of the petition submitted plus any other information obtained by the means described herein.

(b) The board will make a determination for the institution of rulemaking proceedings or for the denial of the petition ~~as the case may be provided by G.S. 150B-16.~~

(c) ~~Within 30 days of submission of the petition, a final decision will be rendered by the board. If the decision is to deny the petition, the board will notify the petitioner in writing, stating the reasons therefor. If the decision is to grant the petition, the board, within 30 days of submission, will initiate a rulemaking notice, as provided in these rules.~~

*Statutory Authority G.S. 150B-16.*

#### SECTION .0800 - NOTICE OF RULEMAKING HEARINGS

.0801 TIMING OF NOTICE  
(REPEALED)

.0802 NOTICE MAILING LIST  
(REPEALED)

.0803 ADDITIONAL INFORMATION  
(REPEALED)

*Statutory Authority G.S. 150B-12; 150B-12(a)(2).*

#### SECTION .0900 - RULEMAKING HEARINGS

.0901 REQUEST TO PARTICIPATE  
(REPEALED)

.0902 CONTENTS OF REQUEST: GENERAL TIME LIMITATIONS (REPEALED)

.0903 RECEIPT OF REQUEST: SPECIFIC TIME LIMITS (REPEALED)

.0904 WRITTEN SUBMISSIONS  
(REPEALED)

.0905 PRESIDING OFFICER: POWERS AND DUTIES (REPEALED)

.0906 STATEMENT OF REASONS FOR DECISION (REPEALED)

.0907 RECORD OF PROCEEDINGS  
(REPEALED)

.0908 EMERGENCY RULES  
(REPEALED)

*Statutory Authority G.S. 150B-12; 150B-13.*

#### SECTION .1000 - DECLARATORY RULINGS

.1002 SUBMISSION OF REQUEST FOR RULING

All requests for declaratory rulings shall be written and mailed to the Board of Podiatry Examiners, ~~4230 Medical Center Drive, Wilmington, North Carolina, 28401. Post Office Box 1088, Raleigh, North Carolina 27602. Attention: Secretary.~~ The container of the request should bear the ~~notation: REQUEST FOR DECLARATORY RULING.~~ The request ~~must include~~ the following information:

- (1) name and address of petitioner;
- (2) statute or rule to which petition relates;
- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him;
- (4) a statement of whether an oral hearing is desired, and if so, the reason therefor.

*Statutory Authority G.S. 150B-17.*

#### .1005 DEFINITION

For purposes of Rule .1004 of this Section, a declaratory ruling shall be deemed to be "in effect": until the statute or rule interpreted by the declaratory ruling is amended, altered or repealed; until the board changes the declaratory ruling prospectively for good reasons; or until any court ~~alters or~~ sets aside the ruling. ~~in litigation between the Board of Podiatry Examiners and the party requesting the rule; or until any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling.~~

*Statutory Authority G.S. 150B-17.*

#### SECTION .1100 - ADMINISTRATIVE HEARING PROCEDURES

.1101 RIGHT TO HEARING (REPEALED)

.1102 REQUEST FOR HEARING (REPEALED)

.1103 GRANTING OR DENYING HEARING REQUESTS (REPEALED)

.1104 NOTICE OF HEARING (REPEALED)

.1105 WHO SHALL HEAR CONTESTED CASES (REPEALED)

.1106 PETITION FOR INTERVENTION  
(REPEALED)

.1107 TYPES OF INTERVENTION  
(REPEALED)

*Statutory Authority G.S. 1A-1, Rule 24; 150B-2(2); 150B-38; 150B-38(f); 150B-40.*

#### SECTION .1200 - ADMINISTRATIVE HEARINGS: DECISIONS: RELATED RIGHTS AND PROCEDURES

.1201 FAILURE TO APPEAR (REPEALED)



Statutory Authority G.S. 150B-42 to 150B-45.

#### .1203 SUBPOENAS

The board is hereby authorized to issue subpoenas ~~upon its own motion or upon a written request. When such written request is made by a party in a contested case, the board shall issue subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. On written request, the board shall revoke a subpoena if, upon a hearing the board finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. as provided in G.S. 150B-39.~~

Statutory Authority G.S. 150B-39.

#### .1204 FINAL DECISIONS IN ADMINISTRATIVE HEARINGS

The board ~~will issue the~~ shall make a written final decision or order in all contested cases as provided by G.S. 150B-42. Its decision is the prerequisite "final decision" for the right to judicial review.

Statutory Authority G.S. 150B-42.

#### SECTION .1300 - NOMINATIONS FOR PODIATRISTS MEMBERS OF THE BOARD OF PODIATRY EXAMINERS; BOARD OF PODIATRY EXAMINERS CONSTITUTING A BOARD OF PODIATRY ELECTIONS; PROCEDURES FOR HOLDING AN ELECTION

##### .1301 BOARD OF PODIATRY ELECTIONS

The Board of Podiatry Examiners is hereby constituted a Board of Podiatry Elections for the purpose of submitting as vacancies on the board ~~occur occur~~, nominees to the Governor for appointment as required by statute. Every podiatrist with a current North Carolina license residing in this state shall be eligible to vote in all elections subject to the rules and procedures set out in Rule .1302.

Statutory Authority G.S. 90-202.4.

##### .1302 RULES AND PROCEDURES FOR CONDUCTING ELECTIONS

The rules and procedures to be followed in the conducting of elections to fill podiatrists' positions on the Board of Podiatry Examiners are as set forth in this Rule:

- (1) At least 30 days prior to the expiration of the term of the board member, written notice of the holding of an election will be sent to every podiatrist with a current North Carolina license residing in this state using a mailing address as contained in the board's official records.
- (2) The notice shall have with it a list of three nominees proposed by the Board of Podiatry Examiners for the board member position to be filled.
- (3) The election or voting for the board member position will take place ~~during the annual meeting of the North Carolina Podiatry Society at its annual meeting in June of each year. annually prior to July 1 of each year. Additional nominations from the floor may be received from any licensed podiatrist in North Carolina in attendance on the day of the election for consideration of any licensed podiatrist residing in North Carolina who is in attendance on the day of the election, and who has agreed in advance that his name may be submitted, and who is otherwise eligible to be elected. Additional nominations may be received from the floor or as write-in nominations on a ballot and may be received from any licensed podiatrist residing in North Carolina.~~
- (4) Ballots will be prepared by the Board of Podiatry Elections and ~~passed out distributed or mailed to all North Carolina licensed podiatrists who reside in North Carolina and who are present on the day of the election. Any podiatrist who is eligible to vote and who wishes to vote and who will not be in attendance at the annual meeting of the society election meeting may request a written ballot from the secretary treasurer secretary or treasurer and shall return the ballot prior to the annual election meeting. Each voting podiatrist will mark his or her his/her ballot and cast his or her his/her ballot in the ballot box or mail the ballot to the board or other device provided by the board for this purpose. Any votes not placed in the ballot box or other such designated device will be void and will not be counted.~~
- (5) The ~~secretary treasurer~~ secretary or treasurer or such other member of the board as may be designated by the president of the Board of Podiatry Examiners ~~solely~~ will conduct a tally of the ballots and submit to the president of the board the names receiv-

- ing the highest number of votes and their respective percentage of votes.
- (6) The president of the board will in turn submit the ~~number of names~~ to the Governor ~~as required by statute which~~ who received the highest number of votes and their respective percentage of votes with biographical data ~~as to each of the names on~~ the two podiatrists being submitted.
- (7) It will not be necessary for an individual podiatrist to receive a majority of votes of those North Carolina licensed podiatrists participating in the election. The ~~secretary-treasurer~~ secretary or treasurer or such other member of the board designated by the president of the board ~~records the three names receiving the highest number of votes.~~ shall record the two names receiving the highest number of votes and their respective

percentage. His report to the president of the board will not be as to the number of votes each individual received, but simply those receiving the highest number of votes in alphabetical order. The voting podiatrists will be notified of the results of the election.

- (8) To be eligible for board membership, a podiatrist must be a licensed podiatrist in North Carolina at least for the period of time prescribed by statute. A vote for any licensed podiatrist not holding a North Carolina license for that minimum period will not be counted.
- (9) ~~The results of the balloting will be confidential between the president of the board and such persons designated by the president of the board to conduct the election.~~

*Statutory Authority G.S. 90-202.4.*

*Upon request from the adopting agency, the text of rules will be published in this section.*

*When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Affected" and the text of the adopted rule will not be republished.*

*Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication of proposed rules.*

## TITLE 17 - DEPARTMENT OF REVENUE

### CHAPTER 7 - SALES AND USE TAX

#### SUBCHAPTER 7B - STATE SALES AND USE TAX

#### SECTION .0200 - GENERAL APPLICATION OF LAW TO MANUFACTURING AND INDUSTRIAL PROCESSING

##### .0206 SALES BY MANUFACTURERS

(a) Sales of tangible personal property by manufacturers to registered merchants in this state for the purpose of resale are not subject to sales or use tax provided the transactions are supported by properly executed Resident and Non-resident Retail or Wholesale Merchant's Certificate of Resale, Form E-590.

(b) Sales of tangible personal property by manufacturers to nonresident retail or wholesale merchants for the purpose of resale in another state are not subject to sales or use tax when delivered to such purchasers in this state provided the nonresident retail or wholesale merchant is registered for sales and use tax purposes in a taxing jurisdiction outside this state and the transactions are supported by properly executed Resident and Nonresident Retail or Wholesale Merchant's Certificates of Resale, Form E-590.

(c) Sales of tangible personal property by manufacturers who deliver the property to purchasers outside this state or who deliver the property to a common carrier or to the mails for delivery to the purchaser at a point outside this state are not subject to sales or use tax. Such sales must be supported by the prescribed records.

(d) Sales of tangible personal property by manufacturers to nonregistered merchants in this state and sales to nonregistered nonresident mer-

chants who accept delivery of the property in this state are subject to the sales or use tax.

(e) Manufacturers purchasing tangible personal property and reselling it in its same form to registered merchants for resale are liable for an annual wholesale license. Manufacturers maintaining a warehouse or other place of distribution in this state, separate and apart from the place of manufacture, for the sale or distribution of their manufactured products to registered merchants for the purpose of resale are also liable for an annual wholesale license. Manufacturers who are liable for the wholesale license are also liable for a merchants certificate of registration license.

(f) Manufacturers who only make sales to registered merchants for resale or sales which are otherwise exempt from the tax are not required to report such sales to the department; however, manufacturers making taxable retail sales or purchases subject to the use tax must register with the department and file sales and use tax reports reflecting such taxable sales or purchases and pay the applicable tax due thereon.

(g) A manufacturer becomes liable for tax on its sales of tangible personal property when it sells directly to users and consumers, including employees. Such sales include:

- (1) sales of bottled drinks by a bottling plant to users and consumers, including employees;
- (2) sales to employees or other persons of food products, meals and other prepared foods by an industrial plant or other business of any kind through a commissary, concession stand, cafeteria, lunch stand or other similar places;
- (3) sales of fuel, hosiery, furniture or any other kind of taxable tangible personal property to employees or any other users or consumers.

(h) A manufacturer's casual or occasional sale of its worn out, obsolete or surplus machinery, accessories and similar items are not subject to the tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-164.28; 105-262; Eff. February 1, 1976; Amended Eff. August 1, 1988; November 1, 1982; February 8, 1981; March 15, 1980.*

#### SECTION .0400 - SPECIFIC INDUSTRIES

##### .0406 OTHER MILLS AND PROCESSORS

Sales of production machinery, and parts and accessories thereto, to sawmills, lumber mills,

millwork plants, flour mills, grist mills, feed mills, fish canneries, fertilizer plants, cotton gins, food canneries, photo finishers, printers, ready-mixed concrete plants and asphalt plants (but not concrete or asphalt contractors), poultry processors, wood preserving plants, brick manufacturers, cement, cinder and clinker block manufacturers, paper mills, tanneries, pottery makers, novelty manufacturers, and any other producer for use in the production process, as the term "production" is defined in 17 NCAC 7B .0202(a) (1), to fabricate, process or manufacture articles of tangible personal property for sale are subject to a one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article.

**Note:** (1) Bulldozers or other equipment sold to sawmill operators for the purpose of opening or maintaining entries to timber lands are not mill machinery and such sales are subject to the three percent sales or use tax.

**Note:** (2) Wedges, cant hooks, log binders, log jacks and log chains sold to sawmill and lumber mill operators for use in cutting timber are classified as mill machinery or parts and accessories for such machinery, and such sales are subject to the one percent sales or use tax.

**Note:** (3) Sales to wood products manufacturers or producers and their contractors or subcontractors of log-skidders, log-carts, tree-shears, feller-bunchers, grapple skidders, winches, chainsaws, clippers, tractors, axes and mallets for use in cutting and transporting timber on lands owned by them or on lands where timber rights have been acquired for timber to be manufactured into wood products or for sale either directly or indirectly to wood products manufacturers are classified as mill machinery and subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article. Sales of such machinery or equipment to employees of wood products manufacturers, producers and logging contractors or subcontractors are subject to the three percent state rate of tax. Motor vehicles licensed for use on the streets and highways of this State are subject to the two percent rate of tax with a maximum tax of three hundred dollars (\$300.00) per vehicle including all accessories attached thereto at the time of delivery to the purchaser when sold to manufacturers, producers and contractors or subcontractors.

**Note:** (4) Dynamite sold to fertilizer manufacturers for use in blasting mounds of fertilizer which has been stored for aging processes is not classified as mill machinery or accessories thereto, and such sales are subject to the three percent sales or use tax.

**Note:** (5) Propylene glycol sold to poultry processors for use as a refrigerant in the manufacturing process is classified as an accessory to mill machinery and such sales are subject to the one percent sales or use tax.

*History Note: Statutory Authority G.S.*

*105-164.4; 105-164.6; 105-164.13; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1988;*

*June 1, 1984; February 8, 1981;*

*March 15, 1980.*

## SECTION .1100 - SALES OF BULK TOBACCO BARNs: FARM MACHINES AND MACHINERY

### .1105 ANIMAL CLIPPERS

Sales of animal clippers and parts therefor to livestock farmers for use in the production of livestock are subject to the one percent rate of tax prior to September 1, 1987. Effective September 1, 1987, sales of animal clippers and parts therefor to livestock farmers for use in the production of livestock are exempt from tax when such clippers are placed or installed in or affixed to any enclosure or structure used for commercial purposes in housing, raising or feeding of livestock.

*History Note: Statutory Authority G.S.*

*105-164.4; 105-164.6; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1988; July 5, 1980.*

### .1108 EGG COOLING CABINETS

Sales of egg cooling cabinets to be placed or installed in or affixed to any enclosure or structure specifically designed, constructed and used for commercial purposes for housing, raising or feeding poultry are exempt from sales or use tax.

*History Note: Statutory Authority G.S.*

*105-164.4; 105-164.6; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1988.*

### .1109 FEED MILLS

Sales of feed mills to be placed or installed in or affixed to any enclosure or structure specifically designed, constructed and used for commercial purposes for housing, raising or feeding swine, livestock or poultry are exempt from sales or use tax.

*History Note: Statutory Authority G.S.*

*105-164.4; 105-164.6; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1988.*

### .1110 COOLING FANS

Sales of cooling fans to be placed or installed in or affixed to any enclosure or structure specifically designed, constructed and used for commercial purposes for housing, raising or feeding swine, livestock or poultry are exempt from sales or use tax.

*History Note: Statutory Authority G.S.*

*105-164.4; 105-164.6; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1988; July 5, 1980.*

**.1112 SILO UNLOADERS: BARN CLEANERS**

Sales of silo unloaders and mechanical barn cleaners to be placed or installed in or affixed to any enclosure or structure specifically designed, constructed and used for commercial purposes for housing, raising or feeding swine, livestock or poultry are exempt from sales or use tax.

*History Note: Statutory Authority G.S.*

*105-164.4; 105-164.6; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1988.*

**.1113 MACHINERY STORAGE EQUIPMENT**

Sales to dairy farmers of equipment used to store or hold machinery which is not in use are subject to the three percent rate of tax unless the equipment is an integral part of an item which is properly classified as farm machinery. Effective September 1, 1987, sales of such commercially manufactured swine, livestock and poultry equipment and parts and accessories therefor placed or installed in or affixed to facilities, enclosures or structures specifically designed, constructed and used for housing, raising or feeding of swine, livestock or poultry are exempt from sales tax.

*History Note: Statutory Authority G.S.*

*105-164.4; 105-164.6; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1988.*

**.1114 SCALES**

Sales of scales to be placed or installed in or affixed to any enclosure or structure specifically designed, constructed and used for commercial purposes for housing, raising or feeding swine, livestock or poultry are exempt from sales or use tax.

*History Note: Statutory Authority G.S.*

*105-164.4; 105-164.6; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1988.*

**SECTION .1200 - HOTELS: MOTELS: TOURIST CAMPS AND TOURIST CABINS**

**.1201 TAXABILITY OF GROSS RECEIPTS**

(a) All persons engaged in the business of operating hotels, motels, inns, tourist homes, tourist camps, and similar type businesses and, effective August 1, 1983, all persons who rent private residences, condominiums or cottages to transients for consideration are deemed to be retailers and must register with the department and collect and remit the tax herein required to be paid. The term "persons who rent to transients," as used in this Rule, includes:

- (1) owners of private residences, cottages, apartments, condominiums, (time share and interval ownership properties as hereinafter described) and similar places; and
- (2) real estate agents, including "real estate brokers" as defined in G.S. 93A-2, who rent any such accommodations to transients on behalf of the owners.

When the rental agent is liable for the tax imposed, the owner is not liable. If the owner rents such accommodations to transients, the owner is liable for the tax and must register with this department for sales and use tax purposes.

(b) Gross receipts derived from the rental of any room or rooms, lodgings or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin and any private residence, condominium, (time share and interval ownership properties), cottage or any other place in which rooms, lodgings or accommodations are furnished to transients for a consideration are subject to the three percent tax, except as set forth in Paragraphs (c) and (d) of this Rule or as otherwise provided by the statute.

(c) Receipts derived from the rental of any room, lodging or accommodation to the same person for a period of 90 continuous days or more are not subject to the tax, and the tax collected from any person prior to the accumulation of such 90 continuous days of occupancy by said person shall be refunded to such person by the retailer collecting the same. A retailer actually making any such refund of tax which he has paid to the department shall be entitled to claim credit for the tax so refunded on a subsequent return filed by him with the department.

(d) Receipts derived from an occasional or isolated rental of a private residence or cottage by the owner for less than a total of 15 days in a calendar year are not subject to sales tax. The 14 days exclusion is applicable only to those private residences and cottages which are not made available for rental to transients. If the private residence or cottage is generally or routinely made available by the owner for rental to tran-

sients, the less than 15 days exclusions is not applicable to such rentals and all receipts therefrom are taxable without regard to the aforementioned period. When private residences and cottages are listed with real estate agents, including "real estate brokers" as defined in G.S. 93A-2, for rental to transients, such private residences and cottages are deemed to be generally available for rental to transients and the less than 15 days exclusion is not applicable to any receipts from such rentals to transients.

(e) Sales of time share or interval ownership property which can be transferred by estate, gift or devise pursuant to deeds or documents under which the owners have a fixed and continuing right to occupy such units during a specified period of time in the same manner as a person who owns or is buying a private residence or cottage are considered to be sales of real property not subject to sales or use tax. When owners of interval ownership and time share property do not occupy the property but rent it to transients or place the property in the hands of a rental agent, including "real estate brokers" as defined in G.S. 93A-2, for rental on their behalf to transients, such receipts are subject to sales tax and the less than 15 days exclusion is not applicable to any receipts from such rentals as explained in Paragraph (d) of this Rule.

*History Note: Statutory Authority G.S. 105-164.4; 105-262; Eff. February 1, 1976; Amended Eff. August 1, 1988; July 1, 1984; January 3, 1984.*

#### SECTION .1400 - SALES OF MEDICINES: DRUGS AND MEDICAL SUPPLIES

##### .1401 PRESCRIPTION MEDICINES AND DRUGS

Sales of drugs or medicines on written prescription of a physician or dentist and, effective August 1, 1988, insulin whether or not sold on prescription, are exempt from sales or use tax. Sales of drugs or medicines pursuant to a physician's or dentist's telephone (oral) prescription are exempt from sales or use tax provided the prescription is reduced to writing, signed by the pharmacist and filed in the same manner as an original written prescription. The terms medicines and drugs shall mean all medicines in the generally accepted sense of the term and also include tonics for internal use, vitamins, ointments, liniments, antiseptics, anaesthetics, serums, and other remedies having preventive and curative properties in medical treatment. Medicines or drugs sold pursuant to the refilling of a physician's or dentist's prescription are likewise ex-

empt from the tax. Vendors making sales of medicines or drugs pursuant to physicians' or dentists' prescriptions or in refilling the same must keep sales records which will clearly segregate such prescription sales. All original prescriptions must be filed and kept available for inspection by the secretary or his authorized agent. When a sale is made to refill a prescription, the seller's records must carry the number of the original prescription so refilled in order that reference to the original can easily be made.

*History Note: Statutory Authority G.S. 105-164.13; 105-262; Eff. February 1, 1976; Amended Eff. August 1, 1988.*

##### .1402 MEDICINES: SALES TO PHYSICIANS

Physicians, dentists and hospitals are considered to be the users or consumers of medicines and drugs which they purchase for use in administering treatment to their patients; therefore, sales thereof to physicians, dentists and hospitals for such use are subject to the three percent sales or use tax, and this is true notwithstanding such medicines and drugs may be of the type usually sold only on the prescription of a physician or dentist. Effective August 1, 1988, sales of insulin are exempt from sales or use tax whether or not sold on prescription. If a physician or dentist should, in fact, make outright sales of medicines or drugs to his patients or to other consumer customers, such sales are exempt from sales or use tax provided such medicines or drugs are sold on written prescription of the physician or dentist, or another physician or dentist, and a record is made of each such sale and kept, along with the written prescription, as a part of the seller's permanent records. If a hospital maintains a pharmacy from which sales of drugs and medicines are made to individuals or to patients for their use after they leave the hospital, such sales are exempt from tax provided they are made on written prescription of a physician or dentist and a record of the sale and the prescription is kept in the manner described in 17 NCAC 7B .1401. An entry on a patient's medical record card or chart of medicines or drugs for such patient does not meet the requirements of a written prescription. Physicians, dentists and hospitals making sales of medicines and drugs, as set forth above, may purchase the medicines and drugs which they will resell or use in administering treatment to their patients without payment of tax to their vendors if the physician, dentist or hospital making the purchase has registered with the Department of Revenue for sales and use tax purposes and furnished his vendor properly exe-

cuted certificates of resale, Form E-590. In such cases, the physicians, dentists or hospitals become liable for remitting the three percent rate of tax directly to this department on the cost price of the medicines and drugs which they use in administering treatment to their patients, and the medicines and drugs sold on written prescription for subsequent use by the patient will be exempt from tax.

*History Note: Statutory Authority G.S.*

*105-164.4; 105-164.6; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1988.*

#### **.1403 NONPRESCRIPTION MEDICINES AND DRUGS**

Sales of medicines or drugs, other than insulin, to users or consumers, except when the sales are made pursuant to a prescription of a physician or dentist or as a refill of a written prescription, as referred to in 17 NCAC 7B .1401, are subject to the three percent sales or use tax.

*History Note: Statutory Authority G.S.*

*105-164.4; 105-164.6; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1988.*

#### **.1405 INSULIN**

Prior to August 1, 1988, sales of insulin on written prescriptions of a physician or a telephone prescription of a physician which has been reduced to writing are exempt from sales tax and refills of such prescriptions are exempt from sales tax provided a written record of each refill is maintained with the refill date, prescription number and price. Effective August 1, 1988, sales of insulin are exempt from sales and use tax whether or not sold on a written prescription.

*History Note: Statutory Authority G.S.*

*105-164.13; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1988.*

### **SECTION .1700 - SALES TO OR BY THE STATE; COUNTIES; CITIES; AND OTHER POLITICAL SUBDIVISIONS**

#### **.1705 HOUSING AUTHORITIES**

Sales of taxable tangible personal property to housing authorities created and existing under Chapter 157 of the North Carolina General Statutes for use in carrying on their activities are subject to the three percent state and any applicable local government sales or use tax.

*History Note: Statutory Authority G.S.*

*105-164.4; 105-164.6; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1988; March 1, 1984.*

### **SECTION .2900 - VENDING MACHINES**

#### **.2903 EXCLUSION OF TAX FROM RECEIPTS**

Operators of vending machines making sales of taxable tangible personal property subject to the three percent state and two percent local sales tax are permitted to divide their gross receipts from sales by such vending machines by 105 percent to arrive at taxable sales when they prepare their monthly sales and use tax reports and remittances.

*History Note: Statutory Authority G.S.*

*105-164.4; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1988; July 5, 1980.*

### **SECTION .4200 - SALES TO THE UNITED STATES GOVERNMENT OR AGENCIES THEREOF**

#### **.4201 IN GENERAL**

(a) Sales made directly to the United States Government, or any agency thereof, are not subject to the sales or use tax. In order to be a sale to the United States Government, the government or agency involved must make the purchase of the property, obtain title to the property before or at the time it is delivered, and pay directly to the vendor the purchase price of such property or use a government bankcard to pay the vendor the purchase price of such property.

(b) Nontaxable federal agencies include the United States Postal Service, Departments of Defense, Army, Navy and Air Force, United States hospitals, federal reserve banks, federal land banks, federal housing projects, federal housing authorities, or any other department or departments of the federal government whose activities are directly under federal control and whose purchases are paid for from the federal treasury.

(c) Sales made to Army, Navy and Air Force Activities Funds, post exchanges, officers' mess funds, noncommissioned officers funds and other voluntary unincorporated organizations of Army, Navy, Marine Corps, Air Force, or Coast Guard personnel authorized by regulations issued by the Departments of Defense, Army, Navy or Air Force are likewise exempt from sales and use tax.

*History Note: Statutory Authority G.S.*

*105-164.13; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1988.*

**.4202 GOVERNMENTAL PURCHASING REQUISITIONS**

Some agencies, instrumentalities, organizations, or activities of the United States Government listed in 17 NCAC 7B .4201 will be using purchase requisitions or affidavits in connection with their purchases and other such agencies, instrumentalities, organizations, or activities of the United States Government will be using a United States Government Bankcard in connection with their purchases. A vendor making sales directly to the United States Government, or any agency or instrumentality thereof, that issues purchase requisitions or affidavits must obtain and keep copies of such purchase requisitions or affidavits signed by the purchasing officer stating that such sales are being made directly to the United States Government or an agency or instrumentality thereof. A vendor making sales directly to the United States Government, or any agency or instrumentality thereof, using a United States Government Bankcard must obtain and keep a copy of the bankcard receipt showing that such sales are being made directly to the United States Government, or an agency or instrumentality thereof. Copies of such bankcard receipts and purchase requisitions or affidavits must be retained by the vendor in his files for three years following the date of sale and must be available for inspection by the Secretary of Revenue or her agents upon request.

*History Note: Statutory Authority G.S. 105-164.13; 105-262; Eff. February 1, 1976; Amended Eff. August 1, 1988.*

**SECTION .4500 - LAUNDRIES; DRY CLEANING PLANTS; LAUNDERETTES; LINEN RENTALS; AND SOLICITORS FOR SUCH BUSINESSES**

**.4501 RECEIPTS OF LAUNDRIES; ETC.**

(a) The gross receipts derived from the following are subject to the three percent sales or use tax:

- (1) services rendered by pressing clubs, cleaning plants, hat blocking establishments, dry cleaning plants, laundries, including wet or damp wash laundries and businesses known as launderettes and launderralls, and all similar type businesses;
- (2) the rental of clean linen, towels, wearing apparel and similar items;
- (3) soliciting cleaning, pressing, hat blocking and laundry;
- (4) rug cleaning services performed by persons operating rug cleaning plants or performed by any of the businesses named in this Rule when the rug cleaning service is performed at the plant; Receipts from rug

cleaning services performed at the customer's location by any of the businesses included in this Rule are not subject to sales and use tax.

Effective July 1, 1988, receipts derived from coin or token-operated washing machines, extractors and dryers are exempt from sales or use taxes. Retail sales of detergents, bleaches and other taxable items of tangible personal property through vending machines continue to be subject to the applicable sales or use tax.

(b) Charges by the businesses named in (a) of this Rule for alterations or storage of garments are not a part of the gross receipts subject to tax when such charges are separately stated on their invoices and in their records. When such charges are not separately stated, the total charge is subject to the three percent gross receipts tax. Sales of thread, buttons, zippers, pockets, and other similar tangible personal property to such businesses for use or consumption in making repairs and alterations to garments being laundered, cleaned or pressed are subject to the three percent rate of tax.

(c) When in addition to the services named in Paragraph (a) of this Rule, the herein-named businesses make retail sales of tangible personal property for which a separate charge is made, such sales are subject to the three percent sales tax. Any charge for labor or services rendered in applying or installing such property are not subject to tax provided such charges are segregated from the charge for the tangible personal property sold on the invoice given to the customer at the time of the sale and in the vendor's records; otherwise, the total amount is subject to tax.

(d) Receipts derived through persons engaged in soliciting laundering or cleaning business are not subject to the tax if such solicitor is a registered retailer and he pays to the department the three percent tax on the total gross receipts derived from the business solicited.

*History Note: Statutory Authority G.S. 105-164.4; 105-262; Eff. February 1, 1976; Amended Eff. August 1, 1988.*

**.4512 EXCLUSION OF TAX FROM RECEIPTS**

*History Note: Statutory Authority G.S. 105-164.4; 105-262; Eff. February 1, 1976; Amended Eff. July 5, 1980; Repealed Eff. August 1, 1988.*

**SECTION .5400 - FORMS USED FOR SALES AND USE TAX PURPOSES**



**.5425 NONRESIDENT MERCHANTS  
REGISTRATION APPLICATION  
FORM: E-572**

*History Note: Statutory Authority G.S.  
105-164.15; 105-262;  
Eff. February 1, 1976;  
Repealed Eff. August 1, 1988.*

**.5426 NONRESIDENT MERCHANTS  
REGISTRATION CERTIFICATE  
FORM: E-573**

*History Note: Statutory Authority G.S.  
105-164.15; 105-262;  
Eff. February 1, 1976;  
Repealed Eff. August 1, 1988.*

**.5427 NONRESIDENT MERCHANTS  
CERTIFICATE OF RESALE  
FORM: E-574**

*History Note: Statutory Authority G.S.  
105-164.15; 105-262;  
Eff. February 1, 1976;  
Repealed Eff. August 1, 1988.*

**.5433 RES/NONRES RETAIL/WHOLE  
MERCHANT CERT/RESALE FORM: E-590**

The Resident and Nonresident Retail or Wholesale Merchant's Certificate of Resale Form, E-590, is to be completed by resident or nonresident registered retail and wholesale merchants and furnished to their suppliers when purchasing tangible personal property for the purpose of resale.

*History Note: Statutory Authority G.S.  
105-164.15; 105-164.28; 105-262;  
Eff. February 1, 1976;  
Amended Eff. August 1, 1988.*

**.5443 SALES AND USE TAX CHART:  
E-502C: FIVE PERCENT**

The sales and use tax chart, E-502C, shows the amount of five percent sales or use tax to be collected on retail sales indicated. The form is sent to taxpayers for use as a guide in determining the five percent tax to be charged on sales.

*History Note: Statutory Authority G.S.  
105-164.15; 105-262;  
Eff. January 3, 1984;  
Amended Eff. August 1, 1988.*

**SUBCHAPTER 7C - LOCAL GOVERNMENT:  
MECKLENBURG COUNTY: SUPPLEMENTAL  
LOCAL GOVERNMENT AND ADDITIONAL  
SUPPLEMENT LOCAL GOVERNMENT SALES  
AND USE TAX ACTS**

**SECTION .0100 - LOCAL GOVERNMENT  
SALES AND USE TAXES**

**.0103 SALES TAX IMPOSED**

(a) Every retailer whose place of business is located in a county which has approved the local sales and use tax is required to collect and remit to the North Carolina Secretary of Revenue the county sales tax at the rate of two percent on:

- (1) the sales price of those articles of tangible personal property now subject to the three percent sales tax imposed by the state under G.S. 105-164.4(1); but not on sales of electricity, piped natural gas or intrastate telephone service taxed under G.S. 105-164.4(4a);
- (2) the gross receipts derived from the lease or rental of tangible personal property where the lease or rental of such property is an established business now subject to the three percent sales tax imposed by the state under G.S. 105-164.4(2);
- (3) the gross receipts derived from the rental of any room or lodging furnished by any hotel, motel, inn, tourist camp or other similar accommodations now subject to the three percent sales tax imposed by the state under G.S. 105-164.4(3);
- (4) the gross receipts derived from services rendered by laundries, dry cleaners, cleaning plants and similar type businesses now subject to the three percent sales tax imposed by the state under G.S. 105-164.4(4).

(b) All retailers making sales from a place of business located within a taxing county must collect and remit the two percent local sales tax for the county in which the retailer's place of business is located. For sales tax purposes, the situs of a sale is the retailer's place of business located within a taxing county where the vendor becomes contractually obligated to make the sale. The term "place of business located within a taxing county" shall mean stores, warehouses, sales outlets, inventories, and other places within a taxing county where tangible personal property is maintained for sale, lease, or rental at retail, and it shall include inventories of goods carried on foot or in vehicles for sale to customers in a taxing county. It shall also include laundries, dry cleaning plants, or similar businesses and hotels, motels, or similar facilities in a taxing county. Taxable tangible personal property sold and delivered from a business location in a taxing county to the buyer or his agent at a point within this State, if such agent is not a common carrier, is subject to the tax for the county in which the retailer's place of business is located notwith-

standing that the purchaser may subsequently transport the property outside this State for use.

*History Note: Statutory Authority G.S.*

*105-262; 105-467;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1988; August 1, 1986.*

#### **.0104 USE TAX IMPOSED**

(a) A local use tax is levied at the rate of two percent of the cost price of each item or article of tangible personal property which is used, consumed or stored for use or consumption in a taxing county and such use tax may be imposed only on those items of tangible personal property upon which the state now levies a three percent use tax under G.S. 105-164.6. Every retailer engaged in business in this state and in the taxing county and required to collect the use tax levied by G.S. 105-164.6 shall also collect the one percent local use tax and remit same to the North Carolina Secretary of Revenue when such property is to be used, consumed or stored in the taxing county. The use tax shall be levied against the purchaser and his liability for such tax shall be extinguished only upon his payment of the tax to the retailer, where the retailer has charged the tax, or to the Secretary of Revenue where the retailer has not charged the tax. Every person who purchases any tangible personal property for storage, use or consumption in a taxing county from vendors located outside the purchaser's county who do not charge the tax must report and remit the applicable use tax to the Secretary of Revenue where she is authorized to collect and administer the tax.

(b) Where a local sales or use tax has been paid with respect to such tangible personal property by the purchaser thereof, either in another taxing county within this State or in a taxing jurisdiction outside this State where the purpose of the tax is similar in purpose and intent to the local sales or use tax which is imposed within this State, said tax may be credited against the local use tax due. If the amount of local sales or use tax paid in another taxing county or jurisdiction is less than the amount of tax due the taxing county, the purchaser shall pay to the Secretary of Revenue an amount equal to the difference between the amounts so paid in the other taxing county or jurisdiction and the amount due in the taxing county. No credit shall be allowed for sales and use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not allow a credit for local government sales taxes paid in this State. The local use tax will not be subject to credit for payment of any state sales or use tax not imposed for the benefit and use of counties and municipalities.

*History Note: Statutory Authority G.S.*

*105-262; 105-468;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1988; February 8, 1981.*

#### **.0105 SALES CONTRACTS**

Generally, a sale is not consummated until delivery is made to the purchaser; therefore, in the absence of unusual circumstances, the local sales and use taxes will be due on all taxable sales or purchases of property, including building materials, which are delivered on or after the effective date of the levy irrespective of the date the order is placed. The local sales and use taxes shall be applicable with respect to sales to contractors of any building materials, supplies or equipment which will be annexed to or become a part of a building or structure being constructed under a lump sum or unit price contract awarded before the effective date of the levy or awarded pursuant to a bid made before the effective date of the levy.

*History Note: Statutory Authority G.S.*

*105-262; 105-467; 105-468.1;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1988.*

#### **.0108 RECORDS TO BE KEPT BY TAXPAYER**

*History Note: Statutory Authority G.S.*

*105-262; 105-474;*

*Eff. February 1, 1976;*

*Repealed Eff. August 1, 1988.*

### **SECTION .0200 - MECKLENBURG COUNTY SALES AND USE TAXES**

#### **.0201 COLLECTION AND ADMINISTRATION OF THE TAX**

The Mecklenburg County Sales and Use Tax Act (Chapter 1096), the Supplemental Local Government Sales and Use Tax Act (Article 40), and the Additional Supplemental Local Government Sales and Use Tax Act (Article 42), hereinafter collectively referred to as the Acts, levy the two percent county sales and use tax in Mecklenburg County. The North Carolina Secretary of Revenue shall collect and shall be charged with the duty of administering the Acts. The secretary is empowered to promulgate such rules and regulations as are necessary and proper for the implementation of the Acts. In construing and interpreting the provisions of the Acts, the Secretary of Revenue may uniformly apply the administrative interpretations which have heretofore been made by the Department of Revenue as to the State Sales and Use Tax Act. The definitions set forth in G.S. 105-164.3 and all other provisions of Article 5 apply to the Acts insofar

as such provisions are not inconsistent with the provisions of the Acts.

*History Note: Statutory Authority G.S. 105-262; Session Laws, Chapter 1096, Section 6 (1967); Eff. February 1, 1976; Amended Eff. August 1, 1988.*

#### **.0202 SALES TAX IMPOSED**

(a) Every retailer with a place of business located in Mecklenburg County is required to collect and remit to the North Carolina Secretary of Revenue the applicable two percent sales tax for Mecklenburg County. The term "place of business located in Mecklenburg County" includes, but is not limited to retail stores, warehouses, sales outlets, inventories and other locations in Mecklenburg County from which retail sales and deliveries are made to purchasers within this State and it shall include the maintaining in Mecklenburg County, either permanently or temporarily, of tangible personal property for the purpose of lease or rental and the selling and delivering of tangible personal property on foot or from vehicles in Mecklenburg County. It shall also include laundries, dry cleaning plants or similar businesses and hotels, motels and similar facilities in Mecklenburg County. The Acts also impose a sales and use tax in Mecklenburg County at the rate of two percent on:

- (1) the sales price of those articles of tangible personal property now subject to the three percent sales tax imposed by the state under G.S. 105-164.4(1) but not on sales of electricity, piped natural gas or intrastate telephone service taxed under G.S. 105-164.4(4a);
  - (2) the gross receipts derived from the lease or rental of tangible personal property on which the state now imposes a three percent sales tax under G.S. 105-164.4(2);
  - (3) the gross receipts derived from the rental of any room or lodging furnished by any hotel, motel, inn, tourist camp or similar public accommodations now subject to the three percent sales tax imposed by the state under G.S. 105-164.4(3); and
  - (4) the gross receipts derived from services rendered by laundries, dry cleaners, cleaning plants and similar type businesses now subject to the three percent sales tax imposed by the state under G.S. 105-164.4(4).
- (b) Taxable tangible personal property sold and delivered from a business location in Mecklenburg County to the buyer or his agent at a point within this State, if such agent is not a common

carrier, for delivery to the purchaser at a point outside this State is subject to the tax in Mecklenburg County notwithstanding that the purchaser may subsequently transport, or employ someone else to transport, the property outside this State for use. For sales tax purposes, the situs of a sale is the retailer's place of business located within a taxing county where the vendor becomes contractually obligated to make the sale.

*History Note: Statutory Authority G.S. 105-262; Session Laws, Chapter 1096, Section 4 (1967); Eff. February 1, 1976; Amended Eff. August 1, 1988; August 1, 1986.*

#### **.0203 USE TAX IMPOSED**

(a) A county use tax is levied at the rate of two percent of the cost price of each item or article of tangible personal property which is used, consumed or stored for use or consumption in Mecklenburg County and such use tax may be imposed only on those items of tangible personal property upon which the state now levies a three percent use tax under G.S. 105-164.6. Every retailer engaged in business in this State and in Mecklenburg County and required to collect the use tax levied by G.S. 105-164.6 shall also collect the two percent county use tax and remit same to the North Carolina Secretary of Revenue when such property is to be used, consumed or stored in Mecklenburg County. The use tax shall be levied against the purchaser and his liability for such tax shall be extinguished only upon his payment of the tax to the retailer, where the retailer has charged the tax, or to the Secretary of Revenue where the retailer has not charged the tax. Every person who purchases any tangible personal property for storage, use or consumption in Mecklenburg County from vendors located outside the purchaser's county who do not charge the tax must report and remit the applicable use tax to the Secretary of Revenue.

(b) Where a county sales or use tax has been paid with respect to such tangible personal property by the purchaser thereof, either in another taxing county within this State or in a taxing jurisdiction outside this State where the purpose of the tax is similar in purpose and intent to the tax which is imposed in Mecklenburg County, said tax may be credited against the county use tax due. If the amount of county sales or use tax paid in another taxing county or jurisdiction is less than the amount of tax due Mecklenburg County, the purchaser shall pay to the Secretary of Revenue an amount equal to the difference between the amounts so paid in the other taxing county or jurisdiction and the amount due in

Mecklenburg County. No credit shall be allowed for sales and use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not allow a credit for local sales taxes paid in this State. The county use tax will not be subject to credit for payment of any state sales or use tax not imposed for the benefit and use of counties and municipalities.

*History Note:* Statutory Authority G.S. 105-262; Session Laws, Chapter 1096, Section 5 (1967);  
Eff. February 1, 1976;  
Amended Eff. August 1, 1988; February 8, 1981.

**.0204 MAXIMUM TAX**

*History Note:* Statutory Authority G.S. 105-262; S.L. (1967), Ch. 1096, s. 4 and 5;

Eff. February 1, 1976;  
Amended Eff. March 1, 1987; February 1, 1987;  
January 1, 1982;  
Repealed Eff. August 1, 1988.

**.0206 EXEMPTIONS AND EXCLUSIONS**

*History Note:* Statutory Authority G.S. 105-262; S.L. 1967, Ch. 1096, s. 10;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1982;  
Repealed Eff. August 1, 1988.

**.0207 RECORDS TO BE KEPT BY TAXPAYER**

*History Note:* Statutory Authority G.S. 105-262; S.L. 1967, Ch. 1096, s. 10;  
Eff. February 1, 1976;  
Repealed Eff. August 1, 1988.

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3	Auditor, Department of State
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11	Insurance, Department of
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13	Labor, Department of
14A	Crime Control and Public Safety, Department of
15	Natural Resources and Community Development, Department of
16	Education, Department of
17	Revenue, Department of
18	Secretary of State, Department of
19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
24	Housing Finance Agency
25	State Personnel, Office of
26	Administrative Hearings, Office of

NOTE: Title 21 contains the chapters of the various occupational licensing boards.

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4	Auctioneers, Commission for
6	Barber Examiners, Board of
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10	Chiropractic Examiners, Board of
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22	Hearing Aid Dealers and Fitters Board
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28	Landscape Contractors, Registration Board of
31	Marital & Family Therapy Certification Board
32	Medical Examiners, Board of
33	Midwifery Joint Committee
34	Mortuary Science, Board of
36	Nursing, Board of
37	Nursing Home Administrators, Board of
38	Occupational Therapists, Board of
40	Opticians, Board of
42	Optometry, Board of Examiners in

44	Osteopathic Examination and Registration, Board of
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50	Plumbing and Heating Contractors, Board of
52	Podiatry Examiners, Board of
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62	Sanitarian Examiners, Board of
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64	Speech and Language Pathologists and Audiologists, Board of Examiners of
66	Veterinary Medical Board

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EO - Executive Order  
FDL - Final Decision Letters  
FR - Final Rule  
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